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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Attorney General, pursuant to the authority vested in it by Sections 82011(d), 87303, 87304 and 87311 of the Government Code, to review proposed conflict of interest codes, will review the amended conflict of interest code of the following:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY:

Fair Political Practices Commission

A written comment period had been established commencing on October 21, 2005, and closing on December 5, 2005. Written comments should be directed to the Office of the Attorney General, Attention Ted Prim, Deputy Attorney General, 1300 I Street, Room 125, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code will be submitted to the Attorney General's Chief Deputy for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing. If a public hearing is requested, a designee of the Chief Deputy will conduct such a hearing on December 6, 2005 in the offices of the Attorney General at 1300 I Street, Sacramento, California at 10 a.m. Subsequent to the hearing, the proposed code will be submitted to the Chief Deputy for review.

The Chief Deputy Attorney General, upon his own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Chief Deputy Attorney General, relative to review of the proposed conflict of interest code. Any written comments must be received no later than 5:00 p.m., December 5, 2005. If a public hearing is to be held, oral comments may be presented to the Chief Deputy's designee at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with this code because this is not a new programs mandated on local agencies by the code since the requirements described herein were mandated by the Political Reform Act of 1974 and apply only to a state agency in this instance. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the code has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Section 82011(d), 87303, 87304 and 87311 provide that the Attorney General as the code reviewing body for the above conflict of interest code of the Fair Political Practices Commission shall approve code as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code should be made to Ted Prim, Deputy Attorney General, 1300 I Street, Room 125, Sacramento, CA 95814, telephone (916) 324-5481.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest code may be obtained from the Attorney General's Office or the Fair Political Practices Commission. Requests for copies from the Commission should be made to Kevin Moen, Fair Political Practices Commission, 428 J Street, Suite 450, Sacramento, California, 95814, telephone (916) 323-6423. Requests for copies from the Attorney General's Office should be made to Ted Prim, Deputy Attorney General, 1300 I Street, Room 125, Sacramento, CA 95814, telephone (916) 324-5481.

TITLE 11. PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION

Management Course Prerequisite Waiver Process for
Attending the Executive Development Course—
Regulation 1005(c) and Procedures D-4
and D-15 (new)

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code sections 13503 (powers of the Commission on POST) and 13506 (Commission on POST authority to adopt regulations). This proposal is intended to interpret, implement and make specific Penal Code section 13503(e) (Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Executive Development Course (EDC) was developed by POST to further the education and professional abilities of law enforcement chief executives. Law enforcement upper management and junior executives are also allowed to attend the course.

In 1974, the Commission adopted into regulation the Management Course, or its equivalent as a prerequisite to the Executive Development Course (EDC). By 1981, the equivalency language had been dropped from the regulation, but the Management Course prerequisite remained. At its April 21, 2005 meeting, the POST Commission voted unanimously to create a waiver process for the prerequisite, which only applies to the current law enforcement executives.

The framers of the prerequisite three decades ago were concerned about the ability of a student who did not have the background of the Supervisory and Management Courses to properly and fully benefit from the Executive Development Course. A student without these previous training experiences might not only have difficulty comprehending more advanced concepts, but might actually detract from the experience of other appropriately trained students. It was regarded that the normal progressive path of training should be from Basic, to Supervisory, to Management, to Executive. Equivalency was eventually dropped due to the difficulty of attempting to match previous experience and training to the detailed and specific curriculum in the post Management Course.

These precepts, now 20 to 30 years old, do not take into account the mobility and diversity of today's law enforcement executives. For a very long time our chiefs and sheriffs generally promoted through the ranks and were mostly Californians. However, in recent years it is not unusual for a law enforcement executive to come from another state with a wealth of experience, training, education, and knowledge. Some, who have served as executives of larger agencies employing hundreds or even thousands of officers, would find the Management Course content elementary and of little benefit, as well as a misuse of the valuable training time of all who are involved.

Also in recent years, officers and supervisors, with considerable law enforcement training and experience, move directly to the position of sheriff or chief of police. Some of these executives, particularly those who were supervisors with small agencies, performed in the capacity of a manager or assistant executive for many years prior to achieving the executive position. In such cases, it might be unreasonable and inappropriate to apply the prerequisite. However, in other cases, it would be very appropriate for the new executive to acquire both supervisory and management training before attending the EDC. An individual approach to applying the prerequisite, taking into account the prior training and experience would seem the most prudent course and in the best interest of California law enforcement. While we see ourselves as the national leader in standards and training, we must recognize that a "one size fits all" approach has its limitations.

At the October 21, 2004 meeting, the Commission requested staff research the appropriate criteria for granting a waiver of the Management Course as a prerequisite to attend the EDC. At the March 8, 2005 Long Range Planning Committee meeting, staff provided a report with the proposed regulatory language specifying the criteria and procedure to apply for such a waiver. The report included the Management Course Instructional Goals to which an applicant's previous training, education and experience would be compared.

The specific major topics for the POST Management Course are now included in Commission Procedure D-4 along with the broad topics already listed, for consistency with action taken by the Commission in meetings on April 27, 2000, and April 21, 2005. At the April 2000 meeting these topics were identified in the Agenda Item approved by the Commission which increased the Management Course length to a total of 104 hours. At the April 2005 meeting the Commission approved a prerequisite waiver process that adopted the updated version of

these specific topics and the related instructional goals to be used in the evaluation of previous training, education, and experience.

It should be noted that the granting of a waiver of the Management Course prerequisite to attend the EDC does not waive the requirement for newly promoted sworn law enforcement managers to attend the Management Course. In addition, this waiver process does not constitute an equivalency of the Management Course. The waiver process is only intended to facilitate attendance of the EDC by law enforcement chief executives who have a wealth of management training, education and experience.

Upon adoption of the proposed amendments, chief executives with sufficient experience, training and education may be granted a waiver of the Management Course prerequisite for attending the Executive Development Course.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. *All written comments must be received at POST no later than 5:00 p.m. on December 5, 2005.* Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, or by fax at 916.227.2801.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his or her duly authorized representative, may request in writing no later than 15 days prior to the close of the public comment period that a public hearing be held.

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available, at least 15 days before adoption, to all persons whose comments were received by POST during the public comment period, and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is made available.

TEXT OF PROPOSAL, RULEMAKING FILE, AND INTERNET ACCESS

The following information regarding the proposed regulatory action is provided on the POST website at www.post.ca.gov/RegulationNotices/RegulationNotices.asp:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the documents listed above by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2005-17. The rulemaking file contains the above-mentioned documents and all information upon which this proposal is based. The file will be maintained for inspection during the Commission's normal business hours (Monday through Friday, 8: a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. A copy may be requested via the above phone number, by writing to the address under Contact Persons at the end of this notice, or by viewing the document on the POST Internet website at the address cited above.

ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no effect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

ASSESSMENT

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to effected private persons than the proposed action.

CONTACT PERSONS

Please direct any inquiries or comments pertaining to the proposed action to Patricia Cassidy, Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Pat.Cassidy@post.ca.gov. The back-up contact person for this proposal is Senior Consultant Gary Sorg. Gary may be reached by telephone at 916.227.2822 or by email at Gary.Sorg@post.ca.gov.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A DIESEL PARTICULATE MATTER CONTROL MEASURE FOR ON-ROAD HEAVY-DUTY DIESEL-FUELED VEHICLES OWNED OR OPERATED BY PUBLIC AGENCIES AND UTILITIES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of a diesel control measure for on-road heavy-duty diesel-fueled vehicles owned or operated by public agencies or utilities. Municipalities and privately owned utilities have responsibilities under the proposal. This notice summarizes the proposed control measure. The staff report presents the control measure in greater detail.

DATE: December 8, 2005

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., December 8, 2005, and may continue at 8:30 a.m., December 9, 2005. This item may not be considered until December 9, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before December 8, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new sections 2022 and 2022.1 in article 4 within chapter 3, division 3, title 13, California Code of Regulations (CCR).

Background: In 1998, ARB identified diesel particulate matter (PM) as a toxic air contaminant. In 2000, the Board adopted a comprehensive plan to reduce PM emissions from diesel-fueled engines and vehicles. The Diesel Risk Reduction Plan includes control measures for on-road public fleets and other public and private fleets.

Proposed Action: Diesel vehicles owned and operated by public agencies and utilities are a concern because they operate in residential communities on a regular basis that increases the communities' risk of exposure to toxic emissions and oxides of nitrogen. The proposed regulations would require that these fleets reduce their diesel emissions through application of best available control technology as specified. Sections 2022 and 2022.1 comprise the control measure for these vehicles.

If adopted, the emission reductions obtained from the proposed regulations will result in lower ambient PM levels and reductions in exposure to primary and secondary diesel PM. Lower ambient PM levels and reduced exposure, in turn, would result in reducing the prevalence of the diseases attributed to PM and diesel PM, including reduced hospitalizations for cardio-respiratory disease and reduced premature deaths. ARB staff estimates that approximately 37 deaths

would be avoided by the year 2020 as a result of cumulative emission reductions in primary and secondary PM obtained through the regulations being proposed.

1. Scope and Applicability

The proposed regulations apply to municipal and utility vehicle owners and require the reduction of diesel PM emissions from 1960 to 2006 model year engines in on-road diesel-fueled heavy-duty vehicles with a manufacturer's gross vehicle weight rating greater than 14,000 pounds.

2. Compliance Requirement for Municipalities and Utilities

Compliance with the proposed regulations requires use of best available control technology, as specified, implemented according to the prescribed schedule, and record keeping. In addition, there are provisions for compliance extensions and special circumstances.

Best Available Control Technology

Four different options would be established for meeting the requirement to use best available control technology. A first option is to use a diesel engine or power system that is certified to the 0.01 grams per brake horsepower-hour (g/bhp-hr) particulate emission standard. New diesel engines available in 2007 will meet this standard. A second option is to use an engine or power system that is certified to the 0.1 g/bhp-hr particulate emission standard in conjunction with the highest level verified diesel emission control strategy available. A third option is to use an alternative fuel engine, heavy-duty pilot ignition engine or gasoline engine. A fourth option is to use the highest level diesel emission control strategy or system verified by ARB for a specific engine.

Implementation Schedule

Staff proposes two implementation schedules. The first schedule applies to all fleets. It begins December 31, 2006, and ends December 31, 2011. The second schedule is optional for municipalities or utilities located in specified "low population counties." It begins December 31, 2008, and ends December 31, 2017. The optional implementation schedule was provided since these fleets typically have less access to revenue sources such as vehicle license fees, taxes, etc. and for utilities fewer customers.

Compliance Extensions

Some owners may experience conditions that would justify a compliance extension to the implementation schedule. Staff is proposing that compliance extensions to the implementation schedule be granted for the following: early implementation for a specified portion of an owner's fleet, lack of a verified diesel emission control strategy for a specific engine or application, and having an engine that is either dual

fuel or bi-fuel, is near retirement, or uses an experimental (non-verified) diesel emission control strategy. Although not specifically a "compliance extension," an accelerated turnover option is included in this section of the regulations for municipalities or utilities located in low population counties.

Special Circumstances

The regulations describe certain "special circumstances" where an owner would be required to upgrade to a higher level best available control technology or could request to use a lower level best available control strategy.

Record Keeping Requirement

Staff proposes a requirement that specific records pertaining to compliance be kept at the terminal and in the vehicle. Each owner must keep these records for the life of the vehicle while it operates in California.

COMPARABLE FEDERAL REGULATIONS

Although the United States Environmental Protection Agency (U.S. EPA) sets emission standards for new diesel, alternative fuel, and gasoline on-road heavy-duty engines, U.S. EPA does not separately regulate public agency and utility engines. Federal emission standards for new engines are codified in title 40, Code of Federal Regulations, part 86.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement Of Reasons (ISOR) for the proposed action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the Board's website listed below, or may be obtained from the Board's Public Information Office, ARB, Visitors and Environmental Services Center, 1001 I Street, 1st Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on December 8, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will also be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to Ms. Sharon Lemieux, Lead Staff, by email to sclemieu@arb.ca.gov or by phone at (626) 575-7067, or to Ms. Kathleen Mead, Manager, by email to kmead@arb.ca.gov or by phone at (916) 324-9550.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR when completed, will be available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/dpmcm05/dpmcm05.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will create costs or savings, as defined in Government Code section 11346.5(a)(6), for a state agency or in federal funding to the state, as discussed in the "Fiscal Impact on State Government" section below.

The Executive Officer has determined that the proposed regulatory action will result in nondiscretionary costs for local agencies or school districts, but will not impose a mandate, as defined in Government Code section 11346.5(a)(5), whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, on local agencies or school districts, as discussed in the "Fiscal Impact on Local Government" section below.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. "The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."

Fiscal Effect On State Government

Two separate fiscal effects may pertain at the state government level: costs to state agencies that own diesel vehicles to bring the vehicles into compliance, and costs for ARB to implement and enforce the regulations.

According to DMV registration data, the State of California owns approximately 1,275 diesel-fueled vehicles as of 2004; however, this number is expected to grow to approximately 1,311 heavy-duty diesel vehicles by 2006. The estimated discounted cost increase for state agencies in FY 2006–2007 would be \$218,000, based on phasing-in an estimated 179 vehicles. The estimated total discounted cost for the state to bring these vehicles into compliance with the regulations over the 17-year life of the regulations is \$8,991,000.

The ARB estimates that three staff will be required to enforce the regulation and to provide guidance for implementation. The cost for three additional ARB staff is approximately \$300,000 annually. Staff anticipates the need for added staff beginning in FY 2005.

Fiscal Effect on Local Government

The proposed regulations would result in significant costs for local public agencies statewide that own and operate diesel-fueled vehicles. Local public agencies operate an estimated 22,839 vehicles subject to this regulation. The local agencies would be required to apply best available control technology to these vehicles as described above to reduce the particulate matter emitted to the maximum extent feasible. There is no cost associated with implementation during the current FY 2005. The total discounted cost increases for FY 2006–2007 is \$2,030,000. The total estimated discounted cost for local agencies over the 17-year life of the regulation is \$156,614,000.

The costs to local public agencies would not be reimbursable state mandated costs pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code because the proposed regulations do not mandate a new program or mandate a higher level of service for an existing program, and because the fees apply generally to private utility companies as well, and therefore do not impose unique requirements on local government agencies.

Economic Impact of Businesses

The adoption of the proposed regulatory action may have an economic impact on private utilities that provide natural gas, electricity or water services if those businesses are unable to increase their rates for the services. However, since a variety of compliance methods are provided in the rule, utilities may not experience any adverse economic impacts because they have the ability to recover costs through rate increases. Staff estimates a total of 209 private utilities

with 4,140 vehicles will be impacted by the regulations. The total estimated discounted cost for private utilities for FY 2006–2007 is \$368,000. The total discounted statewide cost for private utilities from FY 2006 to 2023 is \$28,390,000. Adoption of the proposed rule will not affect the ability of California businesses to compete with businesses in other states.

Businesses that provide technologies or services mandated under this proposal, such as engines, diesel emission control systems, or installation services, may experience significant economic benefit from the regulation. Some, but not all, of the businesses are located in California.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will affect the creation or elimination of jobs within the State of California, the creation of new businesses, or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

Finally, the Executive Officer has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.53(e), on private persons or businesses directly affected resulting from the proposed action. The Executive Officer has also determined that the proposed regulatory action will affect small businesses.

Costs to the Public

If the entire cost of the regulation were passed on to the residents of California, the cost per capita would be approximately \$0.35 annually (or \$6.00 per person total) over the period 2006 to 2022.

Consideration of Alternatives

The Executive Officer has considered proposed alternatives that would lessen the adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for agencies.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency or that has

otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received by **no later than 12:00 noon, December 7, 2005** and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: **dpmcm05@listserv.arb.ca.gov** and received at the ARB **no later than 12:00 noon, December 7, 2005**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, December 7, 2005**.

The Board requests, but does not require, that 30 copies of any written statement be submitted at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of the staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, and 39658 of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39655, 39656, 39657, 39658, 39659, 39660, 39661, 39662, 39664, 39665, 39667, 39669, 39674, 39675, 43000, 43013, 43018, 43101, 43102, 43104, 43105 and 43700 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 1, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with

non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the Board's Public Information Office, 1001 "I" Street, Sacramento, California 95814, (916) 322-2990.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION FOR MOBILE CARGO HANDLING EQUIPMENT AT PORTS AND INTERMODAL RAIL YARDS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation to reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NOx) from mobile cargo handling equipment that operate at ports and intermodal rail yards in the State of California. Any person who sells, offers for sale, leases, purchases, rents, owns or operates any mobile cargo handling equipment that operates at ports or intermodal rail yards in California would be subject to and have responsibilities under the regulation. This notice summarizes the proposed regulation. The staff report presents the regulation and information supporting the adoption of the regulation in greater detail.

DATE: December 8, 2005

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., December 8, 2005, and may continue at 8:30 a.m., December 9, 2005. This item may not be considered until December 9, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before December 8, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator

at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new section 2479, title 13, California Code of Regulations (CCR).

Background: HSC sections 43013(b) and 43018 provide broad authority for ARB to adopt emission standards and other regulations to reduce emissions, including those from toxic air contaminants (TACs), and other air pollutant emissions from vehicular and other mobile sources.

With respect to toxic air contaminants (TAC), California's Air Toxics Program, established under California law by AB 1807 (Stats. 1983, Ch. 1047) and set forth in HSC sections 39650 through 39675, mandates the identification and control of air toxics in California. The identification phase of the Air Toxics Program requires the ARB, with participation of other state agencies, such as the Office of Environmental Health Hazard Assessment (OEHHA), to evaluate the health impacts of, and exposure to, substances and to identify those substances that pose the greatest health threat as TACs. The ARB's evaluation is made available to the public and is formally reviewed by the Scientific Review Panel (SRP) established under HSC section 39670. Following the ARB's evaluation and the SRP's review, the Board may formally identify a TAC at a public hearing. Following the identification of a substance as a TAC, Health and Safety Code sections 39658, 39665, 39666, and 39667 require the ARB, with the participation of the air pollution control and air quality management districts (districts), and in consultation with affected sources and interested parties, to prepare a report on the need and appropriate degree of regulation for that substance.

In 1998, the Board identified diesel particulate matter (diesel PM) as a toxic air contaminant with no Board-specified threshold exposure level. A needs assessment for diesel PM was conducted between 1998 and 2000, which resulted in ARB developing a Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles (Diesel RRP). The Diesel RRP presented information that identified the available options for reducing diesel PM and recommended regulations to achieve further reductions. The scope of the Diesel RRP was broad, addressing all categories of engines, both mobile and stationary.

Once the ARB has evaluated the need and appropriate degree to regulate a TAC, HSC section

39666(c) requires the ARB to adopt regulations to reduce emissions of the TAC from nonvehicular sources to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, in consideration of cost, risk, environmental impacts, and other specified factors. In developing the proposed regulation, State law also requires an assessment of the appropriateness of substitute products or processes. The mobile cargo handling equipment subject to this regulation are vehicular sources. As such, the proposed regulation will be adopted under the authority provided in HSC section 39667.

Presently, no federal law has been promulgated addressing emission reductions from in-use cargo handling equipment engines. Unless specifically preempted under Section 209(e)(1)¹, California is the only state allowed to adopt emission requirements for off-road engines that are different from those of the federal government. Section 209(e)(2)(A) of the federal Clean Air Act (CAA) authorizes California to adopt and enforce emission standards and other requirements for off-road engines and equipment not subject to federal preemption, so long as the California standards "will be, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards." However, California must apply for, and receive authorization from, the administrator of the United States Environmental Protection Agency (U.S. EPA) before ARB may enforce its regulations.

The proposed regulation would reduce emissions of diesel PM and NOx. The regulation would also result in future reductions of reactive organic gases (ROG) due to accelerated turnover of the equipment. Diesel PM emission reductions are needed to reduce the potential cancer risk and other adverse impacts from exposure to this TAC for the people who live in the vicinity of California's major ports and intermodal rail yards. The regulation would also reduce diesel PM and NOx emissions that contribute to regional PM and will assist California in its goal of achieving state and federal air quality standards. Reductions in NOx and ROG, precursors in the formation of ozone pollution, would help reduce regional ozone levels.

The proposed regulation would provide 711 tons of diesel PM emission reductions and 13,781 tons of NOx emission reductions throughout California between the years of 2007 and 2020. These emission

reductions will occur in areas near ports and intermodal rail yards, many of which are non-attainment for the State and federal ambient air quality standards for PM₁₀, PM_{2.5} and ozone.

Description of the Proposed Regulatory Action:

The proposed regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards is designed to use the best available control technology (BACT) to reduce the general public's exposure to diesel PM and NOx emissions from mobile cargo handling equipment at ports and intermodal rail yards. Mobile cargo handling equipment is any motorized vehicle used to handle cargo and includes, but is not limited to, yard trucks, top handlers, side handlers, rubber-tired gantry (RTG) cranes, forklifts, dozers, and loaders. In addition to required performance standards, the regulation would include recordkeeping and reporting requirements to provide staff up-to-date information on cargo handling equipment and activities and to aid in enforcement of the regulation.

The requirements for newly purchased, leased, or rented equipment, as well as in-use equipment, would affect owners and operators of mobile cargo handling equipment that operate at ports and intermodal rail yards in California. The requirements would also affect any person who sells, offers for sale, purchases, leases, or rents mobile cargo handling equipment for use at a port or intermodal rail yard in California. This would include shipping terminals at ports and intermodal rail yard terminals. Mobile cargo handling equipment that does not operate at a port or intermodal rail yard and portable compression-ignition engines are not subject to this regulation.

The proposed regulation would require, beginning January 1, 2007, newly purchased, leased, or rented (new) cargo handling equipment to meet performance standards, which vary depending on the classification of the new equipment (either an off-road equipment or a registered on-road vehicle), and the availability of certified on-road engines for the equipment type and application. For registered on-road vehicles, the new equipment would be required to meet the certified on-road engine standards for the model year in which the engine is purchased. For new off-road equipment where a certified on-road engine is available, the equipment must meet either the on-road engine certification standards or the off-road Tier 4 final certification standards for the model year of the year purchased and the rated horsepower of the engine.

For new off-road equipment for which a certified on-road engine is unavailable, the owner or operator must use the highest level certified off-road engine for the model year of the year purchased and install the highest available level verified diesel emission control strategy (VDECS) within one year of acquiring the new equipment. If no VDECS are available for the

¹ CAA Section 209(e)(1) prohibits all states, including California, from adopting emission standards or other requirements related to the control of emissions from new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles and for new locomotives and engines used in locomotives.

new cargo handling equipment during the initial year of operation, the owner or operator would be required to install the highest level VDECS within six months after it becomes available.

The proposed regulation would require in-use yard trucks to meet performance standards based on BACT by choosing one of three options. One option would be to meet the 2007 or later model year certified on-road engine standards; another option would be to meet the certified Tier 4 off-road standards; and the last option would be to apply VDECS that would result in emissions that are less than or equal to the diesel PM and NOx standards of a certified final Tier 4 off-road diesel engine of the same horsepower rating. Pre-2003 model year yard trucks would be required to comply first, beginning December 31, 2007. Owners or operators of more than three yard trucks would be given additional time to comply. The proposal would allow owners or operators who have installed VDECS or a certified on-road engine prior to December 31, 2006, to delay the compliance date one year.

The proposed regulation would require in-use non-yard truck equipment to use BACT to meet specified performance standards based on the category of equipment. Three categories exist: Basic Container Handling (including, but not limited to top handlers, side handlers, and forklifts²), Bulk Cargo Handling (including, but not limited to dozers, loaders, excavators, and sweepers), and RTG cranes. Each category would have three compliance options, based on BACT. One option would be to use an engine or power system, including a diesel, alternative fuel, or heavy-duty pilot ignition engine, certified to the 2007 or later model year on-road engine standards or Tier 4 off-road engine standards. Another option would be to use a pre-2007 model year certified on-road engine or a certified Tier 2 or Tier 3 off-road engine and apply the highest level VDECS available. The last option would be to use a pre-Tier 1 off-road engine or a certified Tier 1 off road engine and install the highest level VDECS available. If either of these last two options requiring VDECS is chosen, an additional compliance step may be necessary, depending on the category of equipment and the level of VDECS used. For Basic Container Handling and Bulk Cargo Handling Equipment, the additional compliance requirement would be to replace the engine with a Tier 4 off-road engine or install a Level 3 VDECS by December 31, 2015. For RTG cranes, the additional compliance requirement would be the same, but the compliance date would be either December 31, 2015, or the model year plus 12

years, whichever is later. More detail is provided in the Staff Report: Initial Statement of Reasons (ISOR or Staff Report).

The proposal would include provisions that allow qualified owners or operators to delay compliance with the in-use performance standards if an engine is within one year of retirement, if no VDECS are available for an engine used in a particular type of cargo handling equipment, if an experimental diesel PM emission control strategy is used, if there are equipment manufacturer delivery delays, or for yard trucks that received incentive funding from public agencies to apply VDECS by the end of 2005. The maximum delay would depend on the compliance extension granted.

The regulation contains an alternative compliance plan option which would allow an owner or operator to submit for approval by the EO an alternative compliance approach as long as it would achieve emission reduction equal to or greater than what would occur under the regulation. The regulation also provides for the experimental use of emissions control technology that has not yet received approval under ARB retrofit verification process. The regulation also allows the owner or operator to demonstrate that the highest VDECS is not feasible for their application.

Recordkeeping and reporting requirements are also defined in the proposed regulation. Owners and operators would be required to maintain records for all mobile cargo handling equipment, affix a label to each vehicle with the compliance strategy used or planned compliance date (or an alternative method approved by the Executive Officer), submit a compliance plan and annual statement of compliance for their mobile cargo handling equipment, and perform annual reporting by submitting to the ARB their contact information and location of their equipment. These requirements would allow staff to monitor the implementation of the regulation and provide more accurate estimates of pollutant reductions.

COMPARABLE FEDERAL REGULATIONS

As stated above, there are no federal regulations for in-use mobile cargo handling equipment that are comparable to the proposed regulation. However, the proposed regulation relies heavily on the implementation of U.S. EPA's Tier 4 nonroad emission standards for new diesel engines, with which the ARB has harmonized, since engine replacement is one of many compliance pathways. While under CAA Section 213, U.S. EPA may only adopt new emission standards for nonroad engines; California is the only government agency in the nation that may adopt in-use emission standards for non-road engines.

² While forklifts are used to handle both containerized and bulk cargo, for the purposes of this regulation, they are considered to be part of the Basic Container Handling equipment category.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared an ISOR for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, if any. The ISOR is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards."

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the December 8, 2005, hearing. The ISOR is also available on the internet at the web site listed below, or by contacting the staff listed below.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Peggy Taricco, Manager of the Technical Analysis Section, at (916) 327-7213 or by email at ptaricco@arb.ca.gov, or Lisa Williams, Air Pollution Specialist, at (916) 327-1498 or by email at llwilliam@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/cargo2005/cargo2005.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

ARB staff estimates the cost for compliance with the regulation to be approximately 61 million dollars for the total capital and recurring costs. This corre-

sponds to about 6.8 million dollars annually on average for the years 2007 through 2015. This cost, which is based on 2004 dollars, represents the capital cost of equipment, maintenance and replacement, and reporting costs from 2007 through 2015. ARB staff believe the costs associated with the proposed regulation after 2015 will be substantially less.

The cost for a business to comply with this regulation will vary depending on the number and type of cargo handling equipment and whether the equipment is equipped with a VDECS and/or later replaced with a new Tier 4 engine in 2015. For example, the costs for a typical crane engine (rated at 210 hp operated 1370 hours per year) with a diesel particulate filter (DPF) is about \$17,500 for equipment and installation. The estimated annual ongoing costs are based on a reporting cost of about \$500 per terminal with the cost spread over many pieces of equipment. To determine the cost a typical business may incur, we used information from a 2004 ARB survey (survey) on the average number and type of equipment operated by a port container terminal, a port bulk handling terminal, and an intermodal rail yard and applied the annual average costs for the various equipment types. Based on our analysis, we estimate that the total 2007 to 2015 costs to a typical business will be in the range of \$153,000 to \$1,344,000.

California businesses are affected by the proposed annual cost of the regulation to the extent that the implementation of the proposed regulation reduces their profitability. Overall, most affected businesses will be able to absorb the costs of the proposed regulation with no significant adverse impacts on their profitability. This finding is based on the staff's analysis of the estimated change in "return on owner's equity" (ROE). The analysis found that the overall change in ROE ranges from negligible to a decline of about 0.1 percent. Generally, a decline of more than ten percent in ROE suggests a significant impact on profitability. Because the proposed regulation would not alter significantly the profitability of most businesses, we do not expect a noticeable change in employment, business creation, elimination, or expansion, and business competitiveness in California. The change in ROE is expected to be a little larger for a small business, but still well below the 10 percent limit.

Staff does not have access to financial records for most of the companies that responded to the survey. However, the small business status of the survey respondents was determined by including a query on the survey for the owner of the equipment to indicate if their business was a small business (annual gross receipts of \$1,500,000 or less for transportation and warehousing per California Government Code Section 11342.610). Approximately 10 percent (7 out of 68) of

the respondents identified themselves as small businesses. Six of these small businesses provided sufficient data on their equipment inventory to allow an estimation of the estimated costs for compliance with the proposed regulation. Based on our analysis, the total 2007-2015 costs to small businesses ranged from \$33,800 to \$458,000 with an average cost of \$180,000.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, except as discussed below, or other nondiscretionary savings to state or local agencies.

The Executive Officer has made an initial determination pursuant to Government Code 11346.5(a) that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. A number of businesses are integrally linked to the goods that travel through California ports. However, we do not believe that the added costs of the proposed regulation are high enough for ship operators to consider alternative ports outside of California.

The agency is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed regulation.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will have no significant impact on small businesses. The analysis found that the overall change in ROE ranges from negligible to a decline of about 0.1 percent. The change in ROE is expected to be a little larger for a small business, but still well below the 10 percent limit.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the reporting requirements of the regulation that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

In accordance with HSC 43013(a) and (b), the Executive Officer has determined that the standards and other requirements in the proposed regulation are necessary, cost-effective, and technologically feasible for mobile cargo handling equipment at ports and intermodal rail yards.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, December 7, 2005**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: cargo2005@listserv.arb.ca.gov, and received at the ARB **no later than 12:00 noon, December 7, 2005**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, December 7, 2005**.

The Board requests but does not require 30 copies of any written submission. Also the ARB requests that written, facsimile, and e-mail statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require, that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to the ARB in Health and Safety Code sections 39002, 39600, 39515, 39516, 39600, 39601, 39602, 39650, 39655, 39656, 39658, 39659,

39665, 39666, 39667, 39674, 39675, 40000, 41511, 43000.5, 43013, and 43018. This action is proposed to implement, interpret, or make specific Health and Safety Code sections 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39655, 39656, 39657, 39658, 39659, 39665, 39666, 39667, 39674, 39675, 40000, 41511, 43000.5, 43013, and 43018.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990. The document will also be posted on the web site listed above.

TITLE 13/17. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED REGULATIONS TO REDUCE EMISSIONS FROM AUXILIARY DIESEL ENGINES AND DIESEL-ELECTRIC ENGINES OPERATED ON OCEAN-GOING VESSELS WITHIN CALIFORNIA WATERS AND 24 NAUTICAL MILES OF THE CALIFORNIA BASELINE

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of regulations to reduce emissions of diesel particulate matter (PM), nitrogen oxides (NOx), and sulfur oxides (SOx) from the use of auxiliary diesel engines and diesel-electric engines operated on ocean-going vessels located within all California inland waters; all California estuarine waters; and within 24 nautical miles, except as otherwise specified in this proposal, of the California baseline, including but not limited to, the Territorial Sea, the Contiguous Zone, and any California port, roadstead or terminal facility.

DATE: December 8, 2005

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
1001 I Street
Byron Sher Auditorium, Second Floor
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., December 8, 2005, and may continue at 8:30 a.m., December 9, 2005. This item may not be considered until Friday, December 9, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before December 8, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of section 2299.1, title 13, California Code of Regulations (CCR) and section 93118, title 17, CCR. The following documents would be incorporated in the regulations by reference: (1) International Standard ISO 8217, "Specifications of Marine Fuels Requirements for Marine Residual Fuels," (as revised in 1996); (2) International Standard ISO 8754, "Determination of Sulfur Content—Energy-dispersive X-ray Fluorescence Method," (as adopted in 1992); and (3) the following National Oceanic and Atmospheric Administration (NOAA) Nautical Charts, as authored by the NOAA Office of Coast Survey: (A) Chart 18600, Trinidad Head to Cape Blanco (January 2002), (B) Chart 18620, Point Arena to Trinidad Head (June 2002), (C) Chart 18640, San Francisco to Point Arena (July 2000), (D) Chart 18680, Point Sur to San Francisco (March 2001), (E) Chart 18700, Point Conception to Point Sur (July 2003), (F) Chart 18720, Point Dume to Purisima Point (January 2005), and (G) Chart 18740, San Diego to Santa Rosa Island (August 2003).

Background: Health and Safety Code (H&SC) sections 43013 and 43018 direct ARB to adopt standards and regulations that the Board has found to be necessary, cost-effective, and technologically feasible for all mobile source categories, including off-road diesel engines and equipment such as marine vessels, through the setting of emission control

requirements. Specifically, H&SC 43013 directs ARB to adopt such standards and regulations on marine vessels to the extent permitted by federal law.

The California Toxic Air Contaminant Identification and Control Program, established under California law by Assembly Bill 1807 (Stats. 1983, Ch. 1047) and set forth in H&SC sections 39650-39675, requires ARB to identify and control air toxicants in California. In 1998, the Board identified diesel particulate matter as a toxic air contaminant (TAC) with no Board-specified threshold exposure level.

Following the identification of a substance as a TAC, H&SC section 39665 requires ARB, with participation of the air pollution control and air quality management districts (districts) and in consultation with affected sources and interested parties, to prepare a report on the need and appropriate degree of regulation for that substance. Health and Safety Code section 39665(b) requires that this “needs assessment” address, among other things, the technological feasibility of proposed airborne toxic control measures (ATCMs) and the availability, suitability, and relative efficacy of substitute products or processes of a less hazardous nature.

A needs assessment for diesel PM was conducted between 1998 and 2000, which resulted in ARB’s development of the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles (Diesel RRP). The Diesel RRP presented information that identified the available options for reducing diesel PM and recommended control measures to achieve further reductions. The scope of the Diesel RRP was broad, addressing all categories of engines, both mobile and stationary.

Once ARB has evaluated the need and appropriate degree of regulation for a TAC, H&SC section 39666(c) requires ARB to adopt regulations to reduce emissions of the TAC from nonvehicular sources to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, in consideration of cost, risk, environmental impacts, and other specified factors. In developing the proposed control measure, State law also requires an assessment of the appropriateness of substitute products or processes.

The purpose of this proposed regulatory action is to reduce emissions of diesel PM, NO_x, and SO_x. Diesel PM emission reductions are needed to reduce the potential cancer risk and other adverse impacts from PM exposure to people who live in the vicinity of California’s major ports and shipping lanes. Reductions in diesel PM, NO_x (which forms “secondary” nitrate PM in the atmosphere), and SO_x (which forms “secondary” sulfate PM in the atmosphere) will also contribute to regional PM reductions that will assist in California’s progress toward achieving State and

federal air quality standards. Reductions in NO_x, an ingredient in the formation of ozone pollution, will help reduce regional ozone levels.

The proposed regulations will provide about 2.7 tons per day (TPD) of diesel PM emission reductions in 2007 (about 3.7 TPD in 2010), about 1.9 TPD of NO_x emission reductions in 2007 (about 2.3 in 2010), and about 22 TPD of SO_x emission reductions (about 32 TPD in 2010) throughout California, especially in coastal urban areas. Many of these coastal areas are non-attainment for the State and federal ambient air quality standards for PM₁₀, PM_{2.5}, and ozone.

Description of the Proposed Regulatory Action:

Under the approach proposed by staff, the Board would approve adoption of a regulation, pursuant to its authority under H&SC sections 43013 and 43018, which would apply to the emissions from auxiliary diesel engines on ocean-going vessels operating within any of regulated California waters (as defined in the proposal). The Board would also approve adoption of identical provisions as an ATCM, pursuant to its authority under H&SC sections 39666, which would complement the regulation and provide maximum notice to the regulated community of the regulatory requirements on ocean-going vessels.

Applicability

The proposal applies to any person who owns or operates an ocean-going vessel within any of the regulated California waters, which includes all California inland waters, all California estuarine waters, and all waters within a zone 24 nautical miles seaward of the California coastline, except for specified areas along the Southern California coastline. In general, ocean-going vessels include large cargo vessels and passenger cruise ships. The control measure applies to foreign-flagged vessels, which are vessels registered under the flag of a country other than the United States, as well as U.S.-flagged vessels.

The proposed regulations include language explicitly stating and clarifying that the proposal does not change or supersede any existing United States Coast Guard (U.S.CG) regulations, and vessel owners and operators are responsible for ensuring that they meet all applicable U.S.CG regulations, as well as the proposed regulation and ATCM.

Exemptions

The proposed regulations include four exemptions. First, the proposal does not apply to vessels while in “innocent passage,” defined as travel within the 24 nautical mile boundary off California’s coastline without stopping or anchoring, except in limited situations such as when the vessel is in distress or must stop to comply with U.S.CG regulations. A second exemption is included for slow-speed two-stroke diesel engines. The design of these engines differs

significantly from the four-stroke, medium speed engines used in virtually all auxiliary engine applications. The third exemption is for military vessels. Military vessels primarily use specialized military specification distillate fuels that must be used on a consistent basis for military equipment globally. Finally, there is an exemption for auxiliary engines while they are operating on liquefied natural gas or compressed natural gas because of their expected inherently low emissions of diesel PM and NOx.

Emission Limits

Under the staff's proposal, the emissions of diesel PM, NOx, and SOx from a regulated auxiliary diesel engine would generally be limited to the emission rates that would have resulted had the engine been fueled with the distillate fuels identified in the proposal. Starting on January 1, 2007, vessel operators must ensure that their auxiliary engines operating in the regulated California waters meet the first set of emission limits. One way to meet this requirement is to use marine diesel oil (MDO) with a maximum 0.5 percent sulfur by weight or use marine gas oil (MGO). Starting on January 1, 2010, vessel operators would need to ensure that their auxiliary engines operating in regulated California waters meet the second set of emission limits; one way to do this would be to use marine gas oil with 0.1 percent sulfur by weight.

The latter emission standard is intended to be consistent with a similar regulation adopted by the European Union. While staff believes engines can meet the emission limits associated with the 0.1 percent sulfur marine gas oil, we understand that changes in the fuels markets and ship technologies may affect the availability or use of this fuel. Therefore, the proposal includes a provision directing the Executive Officer to reevaluate the feasibility and availability of the 0.1 percent sulfur marine gas oil in 2008. Based on the results of this reevaluation, modifications to this requirement may be proposed to the Board as needed.

The proposal provides built-in flexibility by specifying a performance standard (i.e., emission limits) instead of a prescriptive standard (i.e., specifying which fuels can only be used). Furthermore, the proposal includes additional provisions that should help to maximize the degree of flexibility available to vessel owners and operators. As described below, persons who operate the regulated vessels would have to either comply with these emissions limits, or apply for and obtain permission from ARB to operate under one or more alternative emission control strategies (see "Alternative Compliance Plan" below). In addition, vessel operators would be allowed under specified circumstances to pay a noncompliance

mitigation fee for a limited duration in lieu of meeting the emission limits. These flexibility provisions would provide vessel owners and operators with a wide choice of options to choose from to reduce their emissions.

Recordkeeping

Starting on January 1, 2007, any person who owns or operates an ocean-going vessel within the regulated California waters will be required to maintain specified records in English for a minimum of three years. Staff has designed these requirements to minimize any impacts on vessel crews by relying on existing recordkeeping procedures to the extent possible.

Reporting, Monitoring, and Right of Entry Provisions

The information required to be recorded, as specified in the proposal, would have to be supplied in writing to the Executive Officer, but only upon request. Some of the recordkeeping required by the proposal may already be recorded to comply with other regulations or standardized practices. In these cases, the information may be provided to ARB in a format consistent with these regulations or practices, as long as the required information is provided. Ship owners or operators must also supply additional information as requested that may be necessary to determine compliance with the proposed regulations.

To monitor compliance with the requirements of the proposal, vessel owners or operators would have to provide access to the vessel to ARB employees or officers or the local air districts. This right of entry applies to vessels within the regulated California waters. It includes access to records necessary to establish compliance with the requirements of the proposal, as well as access to fuel tanks or pipes for the purpose of collecting fuel samples for testing and analysis.

Alternative Compliance Plan

The alternative compliance plan (ACP) provision allows ship owners and operators the flexibility to implement alternative emission control strategies in lieu of complying with the emission limits. Under the ACP, vessel owners or operators would be required to achieve and demonstrate equivalent or greater emission reductions over a calendar year than that which would have been achieved with direct compliance with the emission limits. Alternative emission control strategies may include any feasible and enforceable strategies not otherwise required by law, regulation or statute. These can include the use of shore-side electrical power, engine modifications, exhaust treatment devices (e.g., diesel oxidation catalysts), and the use of alternative fuels or fuel additives. The application process is detailed, and special provisions for ships using shore-side power are included in the proposal.

Noncompliance Fee

The proposed regulation allows a vessel owner or operator, under restricted and specified circumstances, to pay a fee in lieu of complying with the emission limits. A vessel owner or operator using this mechanism would have to notify the Executive Officer of the vessel's noncompliance condition prior to the vessel entering regulated California waters. Also, the situations under which the fee provision could be used are limited to a finite set of specific circumstances, all of which must be documented (i.e., a "needs" demonstration). Further, the fee increases substantially with each port visit after January 1, 2007, which serves as an effective deterrent to continued use of the fee and an incentive to make whatever changes may be needed in order to meet the emission limits.

To use this option, the ship owner or operator would need to submit the required notification and mitigation fee, along with evidence demonstrating that the person meets the required conditions for participation in the program. The mitigation fees collected under this program would be used at the ports that are visited; emission reductions from marine and port related sources would be funded with these mitigation fees to benefit nearby affected communities. The fees would be disbursed pursuant to contracts entered into between the participating ports and ARB. If there are no such agreements at the ports visited by the affected vessels, the fees would be deposited into the California Air Pollution Control Fund.

Test Methods and other Incorporated Documents

The proposal references International Standard ISO 8217, as revised in 1996 by the International Organization for Standardization (ISO). This standard includes the properties necessary for a fuel to qualify as DMX or DMA grade fuel (marine gas oil), or DMB grade fuel (marine diesel oil), and specifies the test methods for determining compliance with each of these properties. The proposal also references the test method (ISO 8754, as adopted in 1992) to be used for determining the sulfur level of these fuels, if the use of marine gas oil or marine diesel oil is the method chosen to comply with the emission limits. The proposal allows the use of alternative test methods, such as equivalent methods adopted by ASTM International, which are demonstrated to be equally accurate and approved as such by ARB's Executive Officer.

Sunset Provision

The "sunset" provision directs the Executive Officer to propose for the Board's consideration the termination of the proposed regulations under specified conditions. This would occur if the Executive Officer determines that the International Maritime Organization or the U.S. EPA adopts regulations that

will achieve equivalent or greater emission reductions from ocean-going vessels in California than the proposal would achieve. This provision recognizes that, while California is authorized to regulate the emissions from ocean-going vessels, it would be preferable to regulate such emissions on a national or international basis.

Technology Reevaluation and Review of Baseline and Test Methods

This proposed regulation describes the reevaluation that will be conducted on the 2010 emission limits, which are derived from the use of 0.1 percent sulfur marine gas oil. The ARB staff will conduct this reevaluation no later than July 1, 2008. If ARB determines, based on the reevaluation, that modifications to the regulations are necessary, the Executive Officer will propose changes to the Board prior to January 1, 2009 (a year prior to the implementation date of the January 1, 2010 emissions limits).

This provision also directs the Executive Officer to review the baseline determinations and conduct a public hearing to consider appropriate updates to the baseline. The definition for "Regulated California Waters" is based partly on the definition of "baseline," which generally follows the California coastline but is subject to change due to erosion and accretion. The baseline is published on official charts authored by the National Oceanic and Atmospheric Administration (NOAA); it is ARB staff's understanding that NOAA is in the process of updating these charts. When NOAA finalizes its updating efforts, the Executive Officer can determine at that time whether revisions to the proposed regulations are necessary.

Similar to the baseline review, this provision also directs the Executive Officer to periodically review the test methods cited in the proposal and hold a public hearing to consider recommended changes to the Board as needed.

For the Executive Officer to conduct the hearings on the baseline and test methods specified, the Board will need to delegate such authority to the Executive Officer. The ARB staff intends to seek such express delegation as part of the Board resolution to this proposal.

Severability

This proposed regulation states that if any part of the regulation is held to be invalid, the remainder of the regulation shall continue to be effective.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that are comparable to the proposed regulations. The United States Environmental Protection Agency (U.S.EPA) adopted regulations—title 40, Code of Federal Regulations (C.F.R.), parts 89 and 94—that govern the emissions

from so-called "Category 2" (between 5 and 30 liters per cylinder displacement) and "Category 3" (at or above 30 liters per cylinder displacement) compression-ignition engines used on ocean-going vessels. The staff's proposal governs mainly Category 2-type engines, with some regulated engines falling into Category 3 classification (i.e., diesel-electric engines). The federal regulations are generally consistent with analogous restrictions in Annex VI of the 1973 International Convention for the Prevention of Pollution from Ships (as amended in 1978, also known as the MARPOL 73/78 Protocol).

While the U.S. EPA regulations also apply to ocean-going vessels, they differ significantly from the staff's proposal in several ways. First, the federal regulations apply only to new engines to be installed on vessels, and only to engines installed on U.S. flagged vessels. By contrast, the staff's proposal applies to in-use auxiliary engines on all vessels that visit California ports, including both U.S. and foreign-flagged vessels. Further, the U.S. EPA regulation in 40 C.F.R., part 94, does not apply to the diesel PM emissions from the regulated Category 3 engines, whereas the staff's proposal places a major emphasis on the control of toxic diesel PM emissions, as well as NOx and SOx, on regulated all auxiliary diesel engines, including Category 3 engines (i.e., diesel-electric engines). Because of these differences, the federal regulations are not comparable to the staff's proposal.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, if any. The ISOR is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Regulations to Reduce Emissions from Auxiliary Diesel Engines and Diesel-Electric Engines operated on Ocean-going Vessels Within California Waters and 24 Nautical Miles of the California Baseline."

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing which will begin on December 8, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the website listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Peggy Taricco, Manager of the Technical Analysis Section, at (916) 327-7213 or by email at ptaricco@arb.ca.gov, or Paul Milkey, Staff Air Pollution Specialist, at (916) 327-2957 or by email at pmilkey@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/marine2005/marine2005.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, except as discussed below, or other nondiscretionary savings to state or local agencies.

The Executive Officer has determined that while vessel operators would likely meet the proposal's emission limits by using more costly distillate marine fuel, these costs are a small fraction of the overall operating costs. We therefore expect no significant impacts on affected businesses. On average, we estimated the added annual fuel cost for a typical business operating non-diesel electric vessels to be about \$20,000 and about \$2,000,000 for a typical business operating diesel-electric vessels. For the entire ocean-going shipping fleet that visits California, we estimated an added annual fuel cost of about \$34 million in 2007 and \$38 million in 2010, when the emission limits based on the use of 0.1 percent sulfur marine gas oil becomes effective. As compared to

typical cargo vessels, the proposed regulations will have a larger impact on diesel electric vessels (primarily cruise lines and some tankers).

The Executive Officer has determined that, because the added costs of the proposed regulations are such a small percentage of the overall operating costs, no significant impact on ship operators, businesses that import or export goods, California port competitiveness, or on individuals purchasing such goods is expected, even if all these costs were passed on to the consumer.

The Executive Officer has determined that the total statewide cost of the proposed control measure over a five-year period is estimated to be about \$170 million dollars. This estimated cost was derived from the present value of capital costs combined with recurring costs over a five-year period. The total annual cost is estimated to be about \$38 million for years 2007–2009 and about \$42 million for 2010 and later (this latter figure assumes the reevaluation called for in the proposal finds that 0.1% sulfur marine gas oil will be available in sufficient quantities at that time).

The Executive Officer has further determined that less than ten percent of vessels may need some modifications such as adding a new fuel tank and piping. These retrofit costs will vary widely with the type of modifications, but we estimated the average cost to be on the order of \$100,000 per non-diesel electric vessel and \$100,000 to \$500,000 per diesel-electric vessel, with a total retrofit cost to the industry of about 11 to 18 million dollars.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. A number of businesses are integrally linked to the goods that travel through California ports. However, we do not believe that the added costs of the proposed regulations are high enough for ship operators to consider alternative ports outside California.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined that, pursuant to title 1, CCR, section 4, the proposed regulatory action will have no impact on small businesses because we do not believe that the ship operators subject to this proposal would qualify as

small businesses due to the large capital and operating costs associated with vessel operation.

The Executive Officer has also determined that there is a possibility the proposed regulatory action will result in a positive impact on business creation due to additional sales of marine fuels in California beginning in 2010, when we anticipate most vessel operators would use 0.1 percent sulfur marine gas oil to meet the specified emission limits. This is because California is expected to have 0.1 percent sulfur fuel available, whereas the extent of availability of this fuel in other ports worldwide is somewhat uncertain.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulations that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

In accordance with H&SC sections 43013(a) and (b), the Executive Officer has determined that the standards and other requirements in the proposed regulations are necessary, cost-effective, and technologically feasible for auxiliary diesel engines and diesel-electric engines operated on ocean-going vessels within the regulated California waters.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, December 7, 2005**, and addressed to the following:

Postal mail is to be sent to:
Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: marine2005@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, December 7, 2005**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, December 7, 2005.**

The Board requests but does not require 30 copies of any written submission. The Board also requests that written, facsimile, and e-mail statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in sections 39600, 39601, 39650, 39658, 39659, 39666, 41510, 41511, 43013, and 43018, Health and Safety Code, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3rd 411, 121 Cal.Rptr. 249 (1975). This regulatory action is proposed to implement, interpret, or make specific sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 39650, 39658, 39659, 39666, 41510, 41511, 43013, 43016, and 43018, Health and Safety Code, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3rd 411, 121 Cal.Rptr. 249 (1975).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 215 and 220 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 209, 210, 215 and 220 of said Code, proposes to amend sections 1.71 and 2.10, and subsections (b)(5), (b)(68), (b)(156) and (b)(212) of Section 7.50, and add new sections 1.60, 1.61 and 1.93, Title 14, California Code of Regulations, relating to fishing methods restrictions.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations define the term "hook gap", and restrict hook gap sizes that anglers may use in rivers and streams within the state. For single hooks, the maximum hook gap is one inch, and for multiple-point hooks the maximum gap is 3/4 inch. Current regulations for all rivers and streams also prohibit the use of multiple hooks or more than one single hook on non-buoyant lures exceeding one ounce in weight.

Based on an analysis of the comments expressed at the three August-September public meetings, the Department is proposing three alternatives for proposed regulation changes:

Alternative No. 1 (preferred alternative)

1. In all rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River), reduce the maximum hook gap for single hooks from one inch to 3/4 inch, and for multiple-point hooks, reduce the maximum gap from 3/4 inch to 5/8 inch.
2. In all rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River), limit the maximum leader length between any hook and any weight to 48 inches.
3. Add definitions for "lure", "non-buoyant lure" and "weight".
4. Include clarifying terms to the definition of the Sacramento-San Joaquin River Delta.

Alternative No. 2

Same as Alternative No. 1 except this alternative includes a prohibition on the use of multiple-point hooks or more than one single hook on non-buoyant lures in rivers and streams statewide, except in the Sacramento-San Joaquin River Delta and the Colorado River.

1. In all rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River), reduce the maximum hook gap for single hooks from one inch to 3/4 inch, and for multiple-point hooks, reduce the maximum gap from 3/4 inch to 5/8 inch.
2. Prohibit the use of multiple-point hooks or more than one single hook on non-buoyant lures in rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River).
3. Limit the maximum leader length between any hook and any weight to 48 inches in rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River).
4. Add definitions for "lure", "non-buoyant lure" and "weight".
5. Include clarifying terms to the definition of the Sacramento-San Joaquin River Delta.

Alternative No. 3

Alternative No. 3 differs from Alternatives 1 and 2 by prohibiting the use of multiple-point hooks on non-buoyant lures in a specific reach of the Sacramento River and the anadromous portions of the American, Feather and Yuba rivers.

1. In all rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River), reduce the maximum hook gap for single hooks from one inch to 3/4 inch, and for multiple-point hooks, reduce the maximum gap from 3/4 inch to 5/8 inch.
2. Prohibit the use of multiple-point hooks on non-buoyant lures in the main stem Sacramento River from the Business 80 Pioneer Bridge upstream to the Deschutes Road bridge (near Redding), in the American River downstream of Nimbus Dam to the mouth, in the Feather River downstream of the Table Mountain bicycle bridge in Oroville to the mouth, and in the Yuba River downstream of Daguerre Point Dam to the mouth.
3. Limit the maximum leader length between any hook and any weight to 48 inches in rivers and streams statewide (except the Sacramento-San Joaquin River Delta and the Colorado River).
4. Add definitions for "lure", "non-buoyant lure" and "weight".
5. Include clarifying terms to the definition of the Sacramento-San Joaquin River Delta.

The Department's preferred alternative is Alternative No. 1. Restricting the use of multiple-point hooks on non-buoyant lures is a recommendation stemming from public meetings with the intention of reducing the incidence of snagging salmon and steelhead. Previous regulation changes have reduced lure weights, and Alternative No. 1 further reduces the size

of hooks and the length of leaders allowed in rivers and streams (not including the Sacramento-San Joaquin River Delta and the Colorado River). Because the salmon resources in the Sacramento, American, Feather and Yuba rivers are not being over harvested under current regulations, the Department believes additional restrictions are not warranted. Prohibiting the use of multiple-point hooks on non-buoyant lures would have adverse effects on other fisheries and fishing supply businesses because the restriction would eliminate many traditional fishing lures that have been used legally for decades.

Editorial changes are also proposed to improve the clarity and consistency of the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Museum of Natural History, Farrand Hall, 2559 Puesta del Sol Road, Santa Barbara, California, on Friday, November 4, 2005, at 8:30 a.m. or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the James W. Kellogg Training Center, 935 Detroit Avenue, Concord, California, on Friday, December 9, 2005, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before December 5, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on December 7, 2005. All comments must be received no later than December 9, 2005, at the hearing in Concord, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **Dr. Ed Pert, Chief, Fisheries Programs Branch, Department of Fish and Game, phone (916) 445-3616 and Dennis P. Lee, Supervising Biologist, Department of Fish and Game, phone (916) 358-2833, have been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons,

including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation clarifies existing regulations, and adds additional fishing gear restrictions to protect salmon and steelhead. These regulation changes are unlikely to have negative impacts on businesses.

Alternatives 2 and 3 would potentially adversely affect some fisheries by eliminating the use of traditional gear. Both of these alternatives are also likely to adversely affect fishing supply businesses by reducing the demand for some types of traditional fishing gear. These impacts are not expected to be significant.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5508, 7090, 7708, 8026, 8500, and 9003 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 1052, 5508, 7050 et seq., 7850, 7881, 8026, 8031, 8040, 8041, 8042, 8043, 8046, 8051, 8500, 8834, 9000, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9008, and 9012 of said Code, proposes to add Section 126 and amend Section 180.2, Title 14, California Code of Regulations, relating to Commercial Tanner Crab Fishery Provisions.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Fish and Game Code Section 9000 prohibits commercial harvest of any finfish, mollusk or crustacean using trap gear unless expressly authorized by statute. Other statutes in Article 1 of Chapter 4 of the Fish and Game Code specify trap gear requirements for each directed commercial fishery in the state. Section 9011, which defines crab trap requirements, only provides specifications for traps that are used for purposes of taking Dungeness and rock crabs. Trap gear for other types of crabs is not provided for.

The proposed regulations would provide for the development of a small to moderate-scale commercial Tanner crab trap fishery in deep water off the coast of California that would be adopted under the authority granted to the Commission to manage and regulate emerging fisheries in Section 7090 of the Fish and Game Code.

Based on the success of the experimental Tanner crab (*Chionoecetes tanneri*) trap fishery in 2003 and 2004, the Department has determined that the Tanner crab fishery resource off California satisfies the statutory requirements of an emerging fishery. The Commission granted the experimental gear permits to explore the feasibility of commercial harvest under authority of Fish and Game Code Section 8606, which provides that "the Commission shall encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear." The experimental fishery landed 212,000 pounds of live Tanner crab in 2003 and 461,000 pounds in 2004 around Cape Mendocino. The fishery operated primarily along the 500-fathom depth contour, and between 8 and 35 miles from shore.

The target of major Alaska fisheries, Tanner crabs include several species of crab of the genus *Chionoecetes*, including the species commonly known as "snow crab," and are highly valued for human consumption. The proposal considers impacts to the Tanner crab resource, as well as the offshore environment and its other users.

The proposed regulations would implement the following program components:

1. Tanner Crab Trap Vessel Permit Requirement.

The proposed regulations would establish a new commercial fishing permit that would allow for the directed commercial harvest of Tanner crab using trap gear. To purchase a permit for placement on a vessel, the applicant must have a commercial boat registration, hold a valid commercial fishing license, and submit an application and the permit fee. When the vessel is operating under authority of the permit, any person who operates or assists on

the vessel must hold a commercial fishing license and a General Trap Permit.

- 2. Permit Fee.** The proposed permit fee for a Tanner Crab Trap Vessel Permit is \$10,000. The revenue generated from the fee will be used to offset costs already incurred by Department biological, enforcement and licensing staff for development of the proposed program. In the future, permit revenue will partially fund oversight of the fishery observer program, enforcement, review of biological and fishery data, oversight of ongoing fishery monitoring programs such as logbooks and observers, dockside sampling, site visits, and other biological review and data analysis that will be required on an as-needed basis.
- 3. Prohibit Incidental Take in Existing Trap Fisheries.** Existing trap fisheries that incidentally take Tanner crabs must immediately release Tanner crab under the proposed regulations unless the vessel holds a Tanner Crab Trap Vessel Permit.
- 4. Seasonal Catch Limit of Two Million Pounds.** The proposed regulations would limit the commercial harvest to two million pounds of Tanner crab into California ports each season (April through March of the following year). The proposed limit is based on the current 40 million-pound biomass estimate for Tanner crab off California, and from considering impacts of Tanner crab taken as bycatch in groundfish trawl fisheries, discard mortality of crab taken in the new directed fishery, and the potential for conflict with other fisheries operating in the same waters. The Department will track catches against the harvest limit and shall give not less than 10 days notice of the fishery closure to permittees via a notification letter, and to the public and the Commission via a news release.
- 5. Proposed Trap Construction Requirements, Specifications, and Limits.** The proposed regulations specify the following:
 - (A) General State Trapping Requirements.** Tanner crab traps and fishing activities would be subject to statutes and regulations that apply generally to all commercial trap fishing activity. These include trap logbook and submission requirements, preventing the disturbing of traps of other individuals, trap servicing intervals not to exceed 96 hours, and trap marker buoy and identification requirements.
 - (B) Trap Construction and Dimensional Requirements.** Every Tanner crab trap shall have three escape ports of at least 4.5 inches minimum inside diameter, installed as described in the proposed regulations. Tanner

crab traps must not be more than 10 feet long and not more than 10 feet wide and not more than 42 inches high.

- (C) **Destruction Devices.** Tanner crab traps must have an opening in any sidewall or on the top of the trap of at least 11 inches taken at its smallest inside diameter. The escape opening must be closed with an authorized destruct device attachment material.
 - (D) **Prohibition on Pop-Ups.** Timed buoy release mechanisms capable of submerging a buoy attached to a trap, commonly known as "pop-ups," shall not be used on buoy lines attached to Tanner crab traps, and shall not be possessed by any commercial vessel while taking, attempting to take, or possessing Tanner crabs.
 - (E) **300-Fathom Minimum Depth Requirement for Trapping.** Tanner crab traps may only be used in water depths greater than 300 fathoms.
 - (F) **Vessel Buoy Marking Requirement.** In addition to other marking and buoy requirements, every string of Tanner crab traps shall be marked with a buoy on each end of the string that is marked with the vessel's commercial boat registration number, and preceded by the letters "TC," as specified in the proposed regulations.
 - (G) **Disturbing Traps Prohibited.** Operators or crew aboard permitted vessels may not disturb, move or damage any Tanner crab trap that belongs to another owner, unless the individual has written permission in his or her immediate possession from the permittee whose vessel registration number is marked on the buoy.
 - (H) **Trap and String Limits.** No more than 480 traps may be used per permitted vessel, and not more than six strings with not more than 80 traps per string shall be used. All traps must be fished on a string of traps.
6. **Processing at Sea.** Based on interest expressed by prospective Tanner crab fishery participants, the proposed regulations would allow vessels to process crabs at sea and land them in a condition other than whole, similar to other fisheries including salmon, swordfish, sablefish and some sharks. The proposed regulations would impose additional reporting requirements on fishermen who process at sea, so that landings of processed crab can clearly be distinguished. Processed crab shall be converted to the whole-weight equivalent for quota and trip limit tracking purposes, and for fish landing tax purposes.
7. **Cumulative Vessel Trip Limits.** The proposed regulations would limit the amount of Tanner crab that may be taken or landed per vessel to 250,000

pounds per two-month period. All landings made by the vessel count toward the cumulative trip limit for the two-month period that corresponds to the date on the receipt. Copies of all landing receipts which document the catch of Tanner crab shall be kept onboard the fishing vessel throughout, and for 15 days following, each of the two-month periods.

8. **Incidental Landings and Allowances.** The proposed regulations would allow incidental take of up to five percent by weight for invertebrates other than Tanner crab, except for crabs of the genus *Cancer*, which may not be retained or landed. All finfish taken in Tanner crab traps must be released, with the exception of sablefish, which may be retained if authorized by federal groundfish regulations. No invertebrates or finfish taken in Tanner crab traps may be used as bait.
9. **Observer Requirements and Cooperation with Observer Programs.** Because this is a new commercial fishery that has yet to demonstrate a history of sustainable catches, on-board observation of the new fishery is needed to evaluate the fishery and its impacts. The proposed regulations would require that every permitted vessel carry an onboard observer beginning the day that fishing commences and during all fishing operations that occur over the sixty consecutive days that follow. The cost for the observer would be paid directly by the permittee. The regulations would allow the permitholder the option of contracting with a private data collection company for the service of providing an observer, or recruiting and hiring an observer certified by the National Marine Fisheries Service or by the Alaska Department of Fish and Game who meets the Department's approval. The permittee must seek approval of the selected observer or private data collection firm from the Department at least 60 days prior to the planned beginning of fishing activity as specified in the proposed regulations. The permittee would be responsible for ensuring that the observer follows the data collection protocol and that the data is delivered to the Department at the times and in the manner specified in the proposed regulations. The permittee would also be required to cooperate with any Department observer or other observer program, and as specified in existing regulations of Section 105.5, Title 14, CCR.
10. **Minimum Size Limit.** The proposed regulations specify that any species of Tanner crab taken commercially must have a minimum carapace width of 5 inches. Every person taking Tanner crabs shall carry a measuring device and any Tanner crab that is found to be undersized shall immediately be returned to the water.

11. **Male-Only Fishery.** The proposed regulations would allow only male Tanner crabs to be retained and landed. All female Tanner crabs must immediately be returned to the water.
12. **Prohibition on Use as Bait.** The proposed regulations specify that Tanner crabs may not be used as bait in any commercial fishery.
13. **Tidal Invertebrate Permits.** The proposed regulations specify that Tidal Invertebrate Permits issued pursuant to Section 123, Title 14, CCR, are not required for the commercial take of Tanner crab.
14. **Permit Revocation and Violations.** The proposed regulations specify that a Tanner Crab Trap Vessel Permit shall be revoked if the applicant or permittee submits false information for the purposes of obtaining a permit. Any Tanner Crab Trap Vessel Permit may be suspended, revoked or cancelled by the Commission for violations. The Tanner Crab Trap Vessel Permit holder shall be liable for any violations of the proposed regulations committed by him or her, as well as violations committed by any other person operating under the authority of his or her permit. Any other person violating the proposed regulations would be liable for his or her own violations as well.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the James W. Kellogg Training Center, 935 Detroit Avenue, Concord, California, on December 9, 2005 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before December 2, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on December 6, 2005. All comments must be received no later than December 9, 2005, at the hearing in Concord, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding

address or phone number. **Mr. Gary B. Stacey, Regional Manager of the Department's Marine Region, telephone (562) 342-7108, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) **Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:** The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed 2005-06 regulations would benefit California's commercial fishermen and may benefit several North Coast crab processing plants, all of which are small businesses as defined under Government Code Section 11342.610. Under the proposed regulations, a directed Tanner crab fishery would be open to any California commercial fishermen on payment of the specified fees. Information from an experimental Tanner crab fishery in 2003 and in 2004 was collected to investigate this potentially new revenue producing resource in California. Between February and July 2004, landings in the experimental fishery were approximately 460,964 pounds of Tanner crab, with a reported ex-vessel value of \$559,612. The Tanner crab (*Chionoecetes tanneri*) are often grouped along with *C. opilio* and *C. bairdi*, and marketed as snow crab, Tanner crab, queen crab, or spider crab. This market group

has enjoyed very high market demand both domestically and globally. In year 2000, a drastic decline in the principal supply of domestic snow crab, from Alaska, resulted in imports accounting for more and more of the total U.S. supply of snow crab. (MBA 2004). By the end of year 2001, the U.S. landed approximately 26,843,453 pounds of snow and Tanner crab (12,176 metric tons), whereas imports totaled approximately 100,321,233 pounds (45,505 metric tons). Thus U.S. domestic production accounted for only about 21% of the U.S. market supply of snow crab; the remainder being imported from Canada (63%), Greenland (7%), and Russia (5%), with minor contributions from Japan and other nations. (NMFS 2004). Based on a proposed allowable harvest of two million pounds during a twelve month fishing season, projected ex-vessel revenues for this new California Tanner crab fishery could be as high as \$2,460,000 (2,000,000 lbs x \$1.23, average price per pound for 1995 through 2004, equals \$2,460,000). The California counties that would most likely benefit from this new revenue source are Humboldt and Del Norte counties, assuming that the crab are landed and processed in California. Based on local economic multipliers for these respective counties, projected annual ex-vessel revenues of \$2,460,000 could mean increases of \$2,918,298 to \$3,680,652 in economic activity for Del Norte County and Humboldt County, respectively. (This is derived by multiplying the projected ex-vessel revenues \$2,460,000 by the respective county economic output multipliers of 1.1863 for Del Norte County and 1.4962 for Humboldt County; e.g. Del Norte County multiplier of 1.1863 x \$2,460,000 equals \$2,918,298). (RIMS 2000).

MBA 2004. Monterey Bay Aquarium, Seafood Watch Seafood Report, Snow Crab *chionoecetes* spp., Final Report, February, 2004. Available online at http://www.mbayaq.org/cr/cr_seafoodwatch/content/media/MBA_SeafoodWatch_SnowCrabReport.pdf

NMFS Statistics, 2002. Landings, import and export sources. Available online at www.st.nmfs.gov/webpls/. *As presented in Monterey Bay Aquarium, Seafood Watch Seafood Report, Snow Crab – *chionoecetes* spp., Final Report, February, 2004.

RIMS 2000. RIMS II Multipliers (based on year 2000 national annual input-output data and 2000 regional data), Bureau of Economic Analysis, US Department of Commerce. <http://www.bea.doc.gov/bea/regional/rims/>.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: With a proposed 2,000,000 pound annual harvest allowance, and favorable market demand for Tanner crab, this new fishery could represent 11.6 to 19.4

new full-time job equivalents based on employment multipliers for Del Norte and Humboldt counties, respectively. (RIMS 2000).

- (c) Cost Impacts on a Representative Private Person or Business: Commercial fishermen who elect to purchase a Tanner crab fishery permit would have to pay an annual fee of \$10,000. In addition, they are required to privately arrange for on-board observers to monitor Tanner crab fishing activities, at the fishermen's expense. Costs for observers are expected to be significant, depending on the number of days spent Tanner crab fishing. Each participating vessel is expected to require, on average, about 35 days of Tanner crab onboard observer coverage each season (beginning with the first day of fishing and for all fishing activities during the immediately following 60 days). Since daily observer costs run \$300 to \$350 per day per observer, total observer costs are projected to be about \$10,500 to \$12,250 per vessel each season. Permittees may also have to purchase new Tanner crab traps or adapt existing traps to the proposed specifications. Information from commercial crab trap manufacturers indicates that new traps will cost about \$750 to \$850 each. Under the proposed regulations, each permitted vessel may fish a maximum of 480 traps. Thus a maximum complement of new traps could cost the Tanner crab fishermen \$360,000 to \$408,000 initially.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING CLEANUP AND REVISION OF SMOG CHECK STATION REGULATIONS

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

SOUTHERN CALIFORNIA

December 7, 2005

9:30 a.m.

Bureau of Automotive Repair
1180 Durfee Avenue, Suite 120
Conference/Training Room
South El Monte, CA 91733

NORTHERN CALIFORNIA

December 9, 2005

9:30 a.m.

Contractors State Licensing Board
9821 Business Park Drive
Hearing Room
Sacramento, CA 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on December 9, 2005, or must be received by the Bureau at the above referenced hearings. The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 44002, 44013, 44016, 44030, 44036 and 44037.1 of the Health and Safety Code and Section 9882 of the Business and Professions Code; and to implement, interpret or make specific Sections 44001.3, 44005, 44010.5, 44011, 44012, 44014, 44014.2, 44014.5,

44014.7, 44015, 44016, 44017, 44017.1, 44030, 44036, 44037.1, 44050, 44051.5, 44056, 44062.1, 44070, 44072.10, 44092, 44093, 44094 and 44103 of the Health and Safety Code; Section 11505 of the Government Code; and Sections 220 and 11500 of the Vehicle Code; the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Bureau of Automotive Repair (Bureau), within the Department of Consumer Affairs, is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles and trucks, by requiring that these vehicles meet specific in-use emissions standards as verified by periodic inspections. To ensure uniform and consistent vehicle testing, the Bureau licenses smog check stations and technicians and certifies inspection equipment.

Mobile source emissions reductions are achieved when high emitting vehicles are identified and then repaired. If high emitting vehicles are not identified and repaired, the effectiveness of the Program is greatly diminished.

After the enactment of the federal Clean Air Act Amendments of 1990, the United States Environmental Protection Agency (USEPA) mandated California to adopt a more stringent vehicle inspection program for urban areas of the state that have severe air pollution problems. These "Enhanced Areas" are California's smoggiest urbanized regions, which currently do not meet federal air quality standards for ozone. All vehicles registered in these areas are tested for, in addition to the emissions tested for in the other program areas, another unhealthy smog-forming pollutant, oxides of nitrogen (NOx), by using a treadmill-like device called a dynamometer.

The State of California must conform, under the threat of federal sanctions and citizen lawsuits, to the provisions of the 1990 amendments to the federal Clean Air Act, as administered and enforced by the United States Environmental Protection Agency (USEPA). California has committed to meeting this obligation in its State Implementation Plan (SIP). The State of California is required by federal law to demonstrate that the improvements to the Smog Check Program as outlined in the SIP and state law, are reducing vehicular pollution from automobiles and light-duty trucks by an additional 112 tons per day statewide.

USEPA regulations call for a complete separation of all vehicle testing from repairs to avoid any conflict of interest among stations that do both testing and repair. However, California was successful in gaining the approval of the USEPA for a deviation from the federally preferred total separation by demonstrating equivalency and assuring the objectivity of the test-only component of its State Implementation Plan (SIP). State law and California's SIP provide for the testing of a portion of the vehicles registered in the Enhanced Areas at stations that only perform Smog Check inspections (i.e., "Test-Only" stations).

The Program is continually evolving and fluid, changing over the years to keep up with and take full advantage of newly developing technological advances. As technology has advanced and regulations have been amended to improve the Program, those regulations have become somewhat complex and convoluted, and some provisions have become obsolete. Several regulations need to be amended and brought up to date by removing outdated provisions, consolidating related provisions and clarifying provisions that may appear to conflict with one another.

For example, there are still provisions in regulation that refer to the BAR-90 Test Analyzer System (TAS) and its specifications. The BAR-90 TAS has been completely replaced, statewide, by the BAR-97 Emissions Inspection System (EIS), and can no longer be used in the Program. In addition, there is a separate regulation that addresses the requirement for and the limitations on a telephone line to connect the EIS to the Bureau's Vehicle Information Database (VID) and the Department of Motor Vehicles (DMV). These provisions would be more appropriately included in the regulation that establishes the requirements and specifications for test equipment, the maintenance and calibration requirements for that equipment, and the requirements for the electronic transmission of test data.

The proposed action is intended to provide clarification of existing requirements regarding the operation of smog check stations, smog check inspection and testing equipment and the testing of test-only directed vehicles. The changes proposed in this action are primarily technical, cleanup amendments that clarify existing requirements, eliminate unnecessary duplication, reorganize and relocate certain provisions into more logical and appropriate sections, and eliminate obsolete provisions.

The proposed action will eliminate references in various sections to the now defunct BAR-90 Test Analyzer System (TAS) that has been replaced throughout the state with the BAR-97 Emissions

Inspection System (EIS) platform. The proposed action will specify that test-and-repair stations may not refer a customer to a particular test-only station when the customer's vehicle has been directed to a test-only station, and provides similar requirements to those applicable to test-only stations with respect to providing lists of test-and-repair stations to their customers. The proposed action will consolidate the requirements for telephone line connections for the EIS into one section that includes all equipment, electronic transmission, maintenance and calibration requirements, and will clarify and reinforce the requirement to keep the telephone or communication line connected to the EIS at all times. Provision will also be made for the use of a high speed or broadband connection as an alternative to a modem and telephone line connection. As a result of this consolidation, a violation of these provisions will be subject to issuance of a citation pursuant to Health and Safety Code section 44050, et seq. Finally, the proposed action will clarify and reinforce the prohibition against test-and-repair stations performing smog check inspections on and issuing certificates to vehicles that have been directed to a test-only station. Additional conforming amendments, and minor technical, grammatical and editorial changes without regulatory effect, are also included in the proposed action.

Current Regulation

Existing regulations in Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, are summarized as follows:

1. Section 3340.1 provides a list of definitions of various terms and phrases used in the Smog Check Program.
2. Section 3340.16 specifies the basic general requirements for operation of a smog check test-only station.
3. Section 3340.16.5 specifies the basic general requirements for operation of a smog check test-and-repair station.
4. Section 3340.16.6 specifies the requirements and limitations for telephone lines that must be connected to and used for the electronic transmission of smog check test data by, emissions inspection systems.
5. Section 3340.17 specifies the requirements for operation of smog check stations in basic program areas of the state, and for operation of smog check stations in enhanced program areas of the state.
6. Section 3340.41 specifies the basic, general requirements for performing inspections, tests and repairs by smog check stations.

Effect of Regulatory Action

The proposed action will make the following changes to the existing regulations described above:

1. Amends Section 3340.1 by removing reference to the now obsolete "Test Analyzer System" or "EIS." Other minor technical, grammatical and clarifying editorial changes are also made.
2. Amends Section 3340.16 by removing reference to the now obsolete "Test Analyzer System" or "EIS." Other minor technical, grammatical and clarifying editorial changes are also made.
3. Amends Section 3340.16.5 by reorganizing subsection (c) in a clearer and more logical format. A new subsection (d) is added which clarifies the prohibition against test-and-repair stations referring vehicle owners to a particular test-only station and requires the test-and-repair station to make available to customers a list, provided by the Bureau, of test-only stations in the area. This mirrors the provisions of subsection (e) of Section 3340.16, which prohibits test-only stations from referring vehicle owners to a particular test-and-repair station for repairs. Subsection (d) is renumbered (e), and other minor technical, grammatical and clarifying editorial changes are also made.
4. Repeals Section 3340.16.6 and incorporates those provisions into Section 3340.17.
5. Amends Section 3340.17 by removing reference to the now obsolete "Test Analyzer System" or "EIS" and deleting paragraph (1) of subsection (a) which has become obsolete. The provisions of Section 3340.16.6 are also added as subsection (h) and provision is added allowing the use of high-speed or broadband connections as an alternative to a modem and telephone line connection. Other minor technical, grammatical and clarifying editorial changes are also made.
6. Amends Section 3340.41 by deleting the existing provisions of subsection (e), which duplicate the provisions of subsection (e) of Section 3340.16, and replacing them with provisions that clarify and reinforce the prohibition against test-and-repair stations testing and certifying test-only directed vehicles.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to Any Local Agency or School district for Which Government code Section 17561 Requires Reimbursement: None.

Businesses Impact: The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

The proposed amendments do not impose any new requirements or additional restrictions. They are primarily technical, cleanup amendments that clarify existing requirements, eliminate unnecessary duplication, reorganize and relocate certain provisions into more logical and appropriate sections, and eliminate obsolete provisions.

Impact on Jobs/New Businesses: The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

Effect on Small Business: The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 10240 Systems Parkway, Sacramento, California 95827.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the Bureau of Automotive Repair at the address mentioned above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

James Allen, Regulations Analyst
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: jim_allen@dca.ca.gov

The backup contact person is:

Debbie Romani,
Staff Services Manager
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: debbie_romani@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can also be found on the Bureau's website at www.smogcheck.ca.gov.

TITLE 16. CONTRACTORS STATE LICENSE BOARD

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the Contractors State License Board (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, at 10:00 a.m. on **December 5, 2005**. Written comments must be received by the Board at its office at the above address not later than **December 5, 2005** at 5:00 p.m. or at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially

as described below or may modify such proposal if such modification is sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE CITATIONS

Pursuant to the authority vested by Sections 7008 and 7065 of the Business and Professions (B&P) Code, and to implement, interpret, or make specific Sections 7000.6, 7065, and 7068 of said Code, the Contractors State License Board is considering changes to Division 8 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Repeal Section 829—Credit for Experience.

Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7065 of the B&P Code requires the Board to, among other things, qualify applicants for contractor licenses by written examination. Section 7000.6 of the B&P Code mandates that protection of the public is the highest priority of the Board in executing all of the duties authorized under the law. Section 7068 requires that applicants show the degree of knowledge of the building, safety, health, and lien laws of the state necessary to ensure the safety and protection of the public.

Under the existing regulation (Section 829, CCR, Title 16, Division 8) the Registrar is required to evaluate the experience of the applicants for the purpose of assigning examination credit for experience, in relevant part, as follows: “. . . one-half percentage point for each year of experience, commencing with and including the fifth year and ending with and including the fourteenth year of experience. The maximum credit for experience added to the trade examination shall not exceed five percentage points.”

This proposal would repeal section 829 in order to:

- Comply with the legislative mandate of B&P Code Section 7000.6 directing the Board to make protection of the public the highest priority in “. . . exercising its licensing [and] regulatory . . . functions.”

LOCAL MANDATE

The proposed regulatory action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ON PUBLIC AGENCIES/STD 399

The proposed regulatory action will not result in costs or savings to any state agency, costs or savings to any local agency or school district that is required to be reimbursed under Part 7 of Division 4 (commencing with Section 17500 of the Government Code), other nondiscretionary costs or savings on local agencies, or costs or savings in federal funding to the state.

COST IMPACT ON AFFECTED PRIVATE PERSONS

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

HOUSING COSTS

The proposed regulatory action will not have a significant effect on housing costs.

EFFECT ON SMALL BUSINESS

The proposed regulatory action will not affect small businesses, because it only applies to individuals who are applying for licensure, and are not yet engaged in the business for which the license is required.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Attn: Michael Brown
(916) 255-3939
(916) 255-1395 (FAX)
mbrown@dca.cslb.ca.gov

The backup contact person is:

Betsy Figueira
(916) 255-2798
(916) 255-1395 (FAX)
bfigueira@dca.cslb.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Michael Brown at (916) 255-3939.

COMMENT PERIOD

Written comments must be received by the Board at the Contractors State License Board, 9821 Business Park Drive, Sacramento, CA 95827 not later than

December 5, 2005 at 5:00 p.m. or at the hearing which is to be held in the Board office at 10:00 a.m. on **December 5, 2005**.

AVAILABILITY OF MODIFICATIONS

With the exception of technical or grammatical changes, the full text of any modified proposal will be available from the person designated in this notice as contact person for 15 days prior to its adoption and will be mailed to those persons who submit written or oral testimony related to this proposed regulatory action or who have requested notification of any changes to the proposal.

REFERENCE TO TEXT AND INITIAL STATEMENT OF REASONS

The Board has prepared a statement of the reasons for the proposed action, which is available to the public upon request. The express terms of the proposed action and all information upon which the proposal is based are available upon request.

BUSINESS IMPACT

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because it only applies to a limited number of individuals who are applying for licensure by the Contractors State License Board, and are not yet engaged in the business for which the license is required.

IMPACT ON JOBS/NEW BUSINESSES

The proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California, because it only applies to a limited number of individuals who are applying for licensure by the Contractors State License Board, and are not yet engaged in the business for which the license is required.

PUBLIC HEARING

A public hearing will be held at the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, at 10:00 a.m. on **December 5, 2005**.

FEDERAL MANDATE

The proposed regulatory action is not mandated by federal law or is not identical to any previously adopted or amended federal regulation.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome on affected private persons than the proposed regulatory action. The actual determination must be part of both the Initial and Final Statement of Reasons.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Interested parties may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding the proposed regulatory action can be found at www.cslb.ca.gov.

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING FOR THE ADOPTION OF THE ENTERPRISE ZONE ADMINISTRATION AND ISSUANCE OF VOUCHERS REGULATIONS

Notice is hereby given that the Department of Housing and Community Development (Department) proposes to adopt regulations governing the State Enterprise Zone Program. These regulations govern the implementation of changes to the State's Enterprise Zone program resulting from the passage of Section 1 of Chapter 593, Statutes of 2003 (S.B. 305, hereinafter referred to as "Chapter 593"), and Sections 14, 15, 66 and 67 of Chapter 225, Statutes of 2004 (SB 1097, hereinafter referred to as "Chapter 225"). (These changes amend Government Code Sections 7072, 7076 and 7086, and Revenue and Taxation Code Sections 17053.74 and 23622.7).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period begins on October 21, 2005 and closes at 5:00 p.m. on December 7, 2005. HCD will consider comments received during this timeframe. The regulations are available at www.hcd.ca.gov. Please address your comments to Michelle Adams, Community Affairs, Enterprise Zone Program, 1800 3rd Street, Suite 390, Sacramento, California 95814. Comments can be sent

via fax transmittal to (916) 323-2815, attention: Michelle Adams, Enterprise Zone Program. Or, via e-mail at miadams@hcd.ca.gov.

PUBLIC HEARINGS

A public hearing will be held in Sacramento, CA on Thursday, December 7, 2005 beginning at 10:00 A.M. at the HCD headquarters, Room 183, located at 1800 Third Street; Sacramento, CA 95814. Any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest below. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimonies at the hearings.

AUTHORITY AND REFERENCE

The Department is conducting this rulemaking activity under the authority provided by Government Code Sections 7072, 7076 and 7086, and Revenue and Taxation Code Sections 17053.74 and 23622.7. They implement and make specific Government Code Sections 7076 and 7086.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The primary purpose of this rulemaking is to respond to the Legislature's direction to promulgate regulations governing the issuance of vouchers by local enterprise zones. Article 14 – Enterprise Zone Administration and Issuance of Vouchers – addresses the following topics:

- Designation of a zone manager and staffing
- Standards for a local vouchersing program
- Actual content to be included in a voucher
- Required documentation for issuance of a voucher
- Alternate method of establishing eligibility if documentation is unavailable
- Appeals to the Department

The general purposes of this rulemaking are:

- To establish a uniform, statewide system for qualifying employees, issuing vouchers, and providing appropriate documentation for businesses to receive hiring tax credits.
- To create and maintain a required level of scrutiny to document that an employee is "qualified" thereby entitling the employer for a hiring tax credit pursuant to Revenue and Taxation Code Section 17053.74 or 23622.7.
- To ensure independent, systematic, consistent and recorded verification that the documentation submitted in support of an application for a hiring tax credit vouchers substantiates that the employee is a "qualified employee."

§ 8431. Definitions. This section provides the definitions of key terms used throughout the body of regulations. The definitions in this section as closely as possible mirror the way the terms are used in statute. These definitions are descriptive, are adopted in order to shorten the text of the regulations, and for ease of reference, and are not “interpretive.”

§ 8450.0. Definitions. The purpose of this section is to establish a separate set of definitions necessary for the unique terms used in Article 14. Section 8450 informs the reader that the term “Subdivision” refers to the same subdivision of Revenue and Taxation Code Sections 17053.74 and 23622.7.

§ 8450.1. Designation of Zone Manager and Staffing. This section is necessary in order to establish issuance of vouchers by local zones that was not provided for in statute, and to acknowledge enterprise zone managers.

§ 8450.2. Administration of a Vouchering Program. The purpose of this section is to establish the parameters of any zone vouchering program. And to respond to specific issues raised by businesses and their consultants as a result of the current ad hoc process.

§ 8450.3. Content of a Voucher. This section prescribes the content of vouchers, including the application portion of the voucher. The Department proposes to retain authority to prescribe the format of the voucher.

§ 8450.4. Required Documentation For Issuance of a Voucher. The purpose of this section is to make clear to any applicant for a voucher, and to emphasize to any applicant, that there are four basic requirements for the issuance of a voucher.

§ 8450.5. Acceptable Documentation. In this section, the Department’s intent is to make it as easy as possible for a business applying for a voucher to produce the documentation required to establish that an “eligible employee” has been hired, consistent with the express requirements of statute.

§ 8450.6. Alternate Method of Establishing Eligibility for Issuance of a Voucher. The Department is proposing Section 8450.6 to give businesses and zone managers the flexibility to entertain alternate forms of documentation.

§ 8450.7. Voucher Appeals. Taxpayer-business representatives historically have complained that zones apply inconsistent standards in the issuance or denial of vouchers. For that reason the Department agrees with taxpayer-business representatives that

some form of an appeal process is both fair and necessary. This section establishes a voucher appeals process.

IMPACT OF PROPOSED REGULATIONS

The purpose of the Enterprise Zone program is to stimulate business and industrial growth in depressed areas of the state. Areas designated as enterprise zones derive a variety of governmental benefits including the granting of tax credits to businesses located in an enterprise zone for hiring qualified persons.

EFFECT ON SMALL BUSINESS

The proposed regulations will affect small businesses within an Enterprise Zone. However the regulations do not mandate or require small businesses to take any prescribed action, the program is voluntary if they wish to receive tax credits.

LOCAL MANDATE

The proposed regulatory activity will not impose a mandate on local agencies or school districts. Participation in the program is voluntary.

FISCAL IMPACT

There is no cost impact on private persons and the cost to businesses directly affected is expected to be minimum. Participation in the program is voluntary.

- Cost or savings to any state agency—None
- Cost or savings in federal funding to the state—None
- Other non-discretionary cost or savings imposed upon local agencies—None
- Cost to any local agency or school district for which Government Code section 17500-17630 requires reimbursement—None

EFFECT ON HOUSING COSTS

The focus of the Enterprise Zone program regulations is to stimulate business and industrial growth in depressed areas of the state. It is not anticipated that there will be any impact on housing costs.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs in California; the creation of new businesses or

the elimination of existing businesses within California; or the expansion of businesses currently operating in California. In any case, participation in the program would be voluntary.

STATEMENT OF POTENTIAL COSTS IMPACT ON PRIVATE PERSONS AND BUSINESS DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While private businesses may be eligible for the program, participation is voluntary.

CONSIDERATION OF ALTERNATIVES

The Department of Housing and Community Development must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

The text of the proposed regulations is available upon request, along with the Initial Statement of Reasons, prepared by the Department, which provides the reasons for the proposals. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Michelle Adams at the address and telephone number noted below. The regulations are also available on the department's web site at: www.hcd.ca.gov

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Michelle Adams at the address indicated below. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below.

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person named below.

CONTACT INFORMATION PERSON

HCD: Michelle Adams
(916) 327-0579

HCD Back-Up: Lenora Frazier
(916) 323-7288

HCD Address: State Department of Housing
and Community Develop-
ment
1800 Third Street, Room 390
Sacramento, California 95814

HCD Website: Copies of the Notice of Pro-
posed Action, the Initial State-
ment of Reasons, and the
text of the regulations may be
accessed through our website
at www.hcd.ca.gov

HCD Facsimile No: (916) 323-2815

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period. Direct inquiries concerning the substance of the proposed rulemaking action and any requests for the documents noted above should be made to:

Michelle Adams
Financial Assistance Division—Enterprise
Zone Program
State Department of Housing and Community
Development
1800 3rd Street, Suite 390
Sacramento, California 95814
Telephone (916) 327-0579
Fax (916) 323-2815
miadams@hcd.ca.gov

GENERAL PUBLIC INTEREST

BOARD OF BARBERING AND COSMETOLOGY

NOTICE OF CANCELLATION OF REGULATORY HEARING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology is hereby canceling its regulatory hearing regarding Apprentice Preapplication (§ 7337.5) scheduled for October 24, 2005 and October 31, 2005.

NOTICE IS ALSO GIVEN that a public hearing for this regulatory proposal will be scheduled sometime in the near future. You will be notified of the exact date, time, and location of the new hearing.

Persons who have previously submitted written comments to the Commission regarding the proposed action need not submit comments again. Any comments previously submitted remain in the rulemaking file.

If you have any questions or comments, you may direct them to:

Paul Cobb
Staff Analyst
Board of Barbering and Cosmetology
400 R Street, Suite 5100, Sacramento, CA 95814
e-mail address: Paul_Cobb@dca.ca.gov

OFFICE OF ADMINISTRATIVE LAW

NOTICE OF PUBLIC HEARING AND AMENDMENT TO PREVIOUSLY PUBLISHED NOTICE

The Office of Administrative Law published a Notice of Proposed Rulemaking Action concerning the Emergency Regulations process and Petitions and Decisions on Underground Regulations in the California Regulatory Notice Register of September 16, 2005, Register 2005, 37-Z, p. 1311.

No public hearing was scheduled at that time. However, OAL has since received a request for one.

OAL has scheduled a public hearing regarding this action on November 7, 2006, 10:00 a.m. in Room 113 at the State Capitol, Sacramento, California.

Any inquiries may be directed to William Gausewitz, Director of OAL, at (916) 323-6221, (wgausewitz@oal.ca.gov), or to the OAL Reference Attorney at (916) 323-6815 (staff@oal.ca.gov).

In addition, the back-up contact person for this action has changed from the previously published notice. Melvin Fong is now serving as back-up contact person and can be reached at (916) 324-7952, mfong@oal.ca.gov.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (Proposition 65)

NOTICE TO INTERESTED PARTIES October 21, 2005

REQUEST FOR COMMENTS ON PROPOSED LISTING OF ARECA NUT AND BETEL QUID WITHOUT TOBACCO AS KNOWN TO CAUSE CANCER

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code section 25249.5 *et seq.*, Proposition 65). OEHHA is proposing to include "areca nut" and "betel quid without tobacco" on the list of chemicals known to the state to cause cancer, for the purposes of Proposition 65. A 'betel quid' (synonymous with 'pan' or 'paan') generally contains betel leaf, areca nut and slaked lime, and may contain tobacco. Areca nut is the seed of the fruit of the oriental palm *Areca catechu*.

Health and Safety Code section 25249.8(a) requires that certain substances identified by the International Agency for Research on Cancer (IARC) or the National Toxicology Program (NTP), as described in Labor Code section 6382(b)(1) and (d), be included on the Proposition 65 list. Labor Code section 6382(b)(1) references substances identified as human or animal carcinogens by IARC, and Labor Code section 6382(d) references substances identified as carcinogens or potential carcinogens by IARC or NTP.

In 2004, IARC issued the monograph *Betel-quid and Areca-nut Chewing and Some Areca-nut-derived Nitrosamines* (Volume 85) in its series *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*. In this monograph, IARC concluded "Areca nut is *carcinogenic to humans* (Group 1)." In the same monograph, IARC concluded "Betel quid without tobacco is *carcinogenic to humans* (Group 1)." Betel quid with tobacco was previously classified by IARC as "*carcinogenic to humans* (Group 1)" and was listed under Proposition 65 on January 1, 1990; IARC reiterated that identification in the 2004 monograph.

Pursuant to state law, IARC's identification of "areca nut" as carcinogenic to humans means that "areca nut" must be included on the Proposition 65

list (Labor Code sections 6382(b)(1) and (d)). Pursuant to state law, IARC's designation of "betel quid without tobacco" as carcinogenic to humans means that "betel quid without tobacco" must be included on the Proposition 65 list (Labor Code sections 6382(b)(1) and (d)). Therefore, OEHHA proposes to add "areca nut" and "betel quid without tobacco" to the Proposition 65 list of chemicals known to cause cancer. Anyone wishing to provide comments as to whether "areca nut" and "betel quid without tobacco" meet the requirements for listing as causing cancer specified in Health and Safety Code section 25249.8(a), by reference to Labor Code sections 6382(b)(1) and (d), should send written comments in triplicate, along with any supporting documentations, by mail or by fax to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: coshita@oehha.ca.gov. In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on November 21, 2005.

DISAPPROVAL DECISIONS

BOARD OF CHIROPRACTIC DECISION OF DISAPPROVAL

DECISION SUMMARY

The California Board of Chiropractic Examiners (Board) proposed regulatory amendments to the California Code of Regulations (CCR) to permit licensed chiropractors to perform manipulation under anesthesia (MUA), subject to specified conditions. On August 26, 2005, the regulation was submitted to the Office of Administrative Law (OAL) for review. OAL notified the Board that it had disapproved the regulation on October 5, 2005. OAL disapproved the regulation because provisions of the regulation did not comply with the consistency, authority, necessity, and clarity standards of the Administrative Procedure Act (APA).

CONCLUSION

As explained above, OAL disapproves the regulatory action for failure to comply with the consistency, authority, necessity, and clarity standards of the APA. If you have any questions, please do not hesitate to contact me at (916) 323-6221.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF ACCOUNTANCY

Examination and Licensure

This action without regulatory effect conforms the qualifying date for licensure to recent changes in statute.

Title 16

California Code of Regulations

AMEND: 7, 7.1, 9, 9.2, 11.5, 13 REPEAL: 14

Filed 10/11/05

Effective 11/10/05

Agency Contact: Aronna Wong (916) 263-3788

CALIFORNIA HORSE RACING BOARD

Application for License to Conduct a Horse Racing Meeting

In this regulatory action, the California Horse Racing Board amends a regulation setting forth the application requirements for a license to conduct a horse racing meeting, including revisions to application forms.

Title 4

California Code of Regulations

AMEND: 1433

Filed 10/12/05

Effective 11/11/05

Agency Contact: Harold Coburn (916) 263-6397

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Revisions to Waste Tire Hauler Regulations (Comprehensive Trip Log)

This emergency regulatory action amends the manifesting requirements for waste and used tire haulers,

waste tire generators, tire dealers, retreaders and end use facilities. (Previous OAL file # 05-0602-02 E)

Title 14

California Code of Regulations

ADOPT: 18459.1.2 AMEND: 18449, 18450, 18451, 18453.2, 18456, 18456.2.1, 18459, 18459.1, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18460.2.1, 18461, 18462, 18463, 18464, 18466

Filed 10/12/05

Effective 10/12/05

Agency Contact: Wendy Breckon (916) 341-6068

DENTAL BOARD OF CALIFORNIA

Continuing Education Requirements

This regulatory action revises the continuing education requirements for licensees of the Dental Board of California.

Title 16

California Code of Regulations

AMEND: 1016, 1017

Filed 10/06/05

Effective 11/05/05

Agency Contact: Richard DeCuir (916) 263-2300

DENTAL BOARD OF CALIFORNIA

Approval of Radiation Safety Courses

Updates existing regulations governing dental x-ray technicians to reflect statutory changes, provide greater specificity in course requirements and structure, and use language that applies to both film and digital radiography.

Title 16

California Code of Regulations

AMEND: 1014, 1014.1

Filed 10/05/05

Effective 11/04/05

Agency Contact: Richard DeCuir (916) 263-2300

DEPARTMENT OF FOOD AND AGRICULTURE

Mediterranean Fruit Fly Interior Quarantine

In this emergency regulatory action, the Department of Food and Agriculture amends a regulation pertaining to the quarantine for the Mediterranean fruit fly to establish a quarantine area in the Rancho Cucamonga area of San Bernardino County.

Title 3

California Code of Regulations

AMEND: 3406(b)

Filed 10/07/05

Effective 10/07/05

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF INSURANCE

Special Investigative Units

This is the certification of compliance for emergency action first approved in September, 2003, that repealed the existing regulations on special investiga-

tive units of insurance companies and adopted new regulations in their place in order to increase the detection and deterrence of insurance fraud, thereby protecting the public welfare.

Title 10

California Code of Regulations

ADOPT: 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2698.37, 2698.38, 2698.39, 2698.40, 2698.41, 2698.42, 2698.43 REPEAL: Sections 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2698.37, 2698.38, 2698.39, 2698.40, 2698

Filed 10/07/05

Effective 10/07/05

Agency Contact: Debra Chaum (415) 538-4115

DEPARTMENT OF PESTICIDE REGULATION

Pest Control Adviser Licenses for Public Agency Employees

This regulatory action requires that specified governmental employees who make recommendations on the use of pesticides must be licensed.

Title 3

California Code of Regulations

ADOPT: 6551

Filed 10/07/05

Effective 11/06/05

Agency Contact:

Linda Irokawa-Otani (916) 445-3991

EDUCATION AUDIT APPEALS PANEL

Audits of K-12 Local Education Agencies FY 05-06

This action is the Certificate of Compliance filing making permanent the prior emergency adoption of the FY 05/06 audit guide for the annual audit of local education agencies (LEA) pursuant to Education Code section 41020. The prior emergency filing made permanent here is OAL file number 05-0426-06E.

Title 5

California Code of Regulations

ADOPT: 19850, 19851, 19852, 19853, 19854

AMEND: 19814, 19814.1

Filed 10/11/05

Effective 10/11/05

Agency Contact:

Carolyn Pirillo (916) 445-7745

FAIR POLITICAL PRACTICES COMMISSION

Filing Officers Assuming and Leaving Office SEIs

This regulation concerns the filing of Assuming and Leaving Office Statements of Economic Interests and also Alternates and Designees.

Title 2

California Code of Regulations

ADOPT: 18117, 18772

Filed 10/11/05
Effective 11/10/05
Agency Contact: Steve Russo (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION

Filing Dates for Multi-Agency JPA Filers

The Fair Political Practices Commission is adopting section 18735.5 of title 2, California Code of Regulations. This adoption is entitled "Filing Dates for Assuming Office, Annual, or Leaving Office Statements of Economic Interests for Multi-Agency Filers of Joint Powers Insurance Agencies".

Title 2
California Code of Regulations
ADOPT: 18735.5
Filed 10/06/05
Effective 11/05/05
Agency Contact: John Wallace (916) 445-4812

FAIR POLITICAL PRACTICES COMMISSION

Contents of Disclosure Statements—Advertisement Disclosure

This action amends regulations on Contents of Disclosure Statements and Advertisement Disclosures.

Title 2
California Code of Regulations
AMEND: 18450.4
Filed 10/11/05
Effective 11/10/05
Agency Contact: Scott Tocher (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION

Permanent Ban Participating in the Proceeding

The Fair Political Practices Commission is amending section 18741.1, title 2, California Code of Regulations. This amended section is entitled "Permanent Ban Participating in the Same Proceeding".

Title 2
California Code of Regulations
AMEND: 18741.1
Filed 10/06/05
Effective 11/05/05
Agency Contact:
William J. Lekeit (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION

Required Record Keeping for Chapter 4

The Fair Political Practices Commission is amending sections 18401, 18427.1, 18700, 18705, 18707.9, 18730, and 18750, title 2, California Code of Regulations. These aforementioned sections are entitled Required Recordkeeping for Chapter 4, Notification to Contributors of \$5,000 or more, Basic Rule; Guide to Conflict of Interest Regulations, Standards for Determining Whether a Financial Effect on an Economic Interest is Material, Public Generally—Residential Properties, Provisions of Conflict of

Interest Codes, and Procedures for the Promulgation and Adoption of Conflict of Interest Codes for State Agencies, respectively.

Title 2
California Code of Regulations
AMEND: 18401, 18427.1, 18700, 18705, 18707.9, 18730, 18750
Filed 10/11/05
Effective 11/10/05
Agency Contact: Joan Giannetta (916) 322-5660

RESOURCES AGENCY

California Environmental Quality Act (CEQA) Guidelines

This change without regulatory effect amends sections 15000–15386, noninclusive, of title 14 of the California Code of Regulations (CCR), concerning the California Environmental Quality Act (CEQA) Guidelines, and makes changes to the Authority and Reference citations.

Title 14
California Code of Regulations
AMEND: 15000, 15001, 15002, 15003, 15004, 15005, 15006, 15007, 15020, 15021, 15022, 15023, 15024, 15025, 15040, 15041, 15042, 15043, 15044, 15045, 15050, 15051, 15052, 15053, 15060, 15060.5, 15061, 15062, 15063, 15064, 15064.5, 15064.7, 15065, 15070, 1
Filed 10/06/05
Effective 10/06/05
Agency Contact:
Sandra S. Ikuta (916) 653-5481

STATE WATER RESOURCES CONTROL BOARD
Amendments to the California Ocean Plan

This regulatory action amends the California Ocean Plan making changes in the following areas: 1) Choice of Indicator Organisms for Water-Contact Bacterial Standards, 2) Reasonable potential: Determining when Ocean Plan Water Quality-based Effluent Limitations are Required, and 3) Classification of Areas of Special Biological Significance (ASBS) as State Water Quality Protection Areas (SWQPAs), rename certain ASBS to coincide with name changes corresponding to Marine Managed Areas, and clarification that all exceptions are subject to Triennial Review.

Title 23
California Code of Regulations
ADOPT: 3005
Filed 10/12/05
Effective 10/12/05
Agency Contact:
Dominic Gregorio (916) 341-5488

**SUPERINTENDENT OF PUBLIC INSTRUCTION
CDD Programs—Alternative Payment Programs**

Assembly Bill (AB) 72 (Statutes of 2004, Chapter 358) effective January 1, 2005 amends section 8212 and 8226 of the Education Code to require Resource and Referral (R&R) programs within two business days of being notified by the California Department of Social Services that a facility's license has been temporarily suspended, revoked, or placed on probation to (1) notify Alternative Payment Programs (APPs) and County Welfare Departments (CWDs) providing child care and development services for recipients of CalWORKS within their jurisdiction of the temporary suspension, revocation, or probation and (2) remove the facility from its referral list and provide notification to the facility of this action. Within two days of being notified of a suspension or revocation, AB 72 requires the APPs and CWDs to terminate payment to the facility and notify parents served by the facility that payment has been terminated and why. This filing is a certificate of compliance with amendments for an emergency regulatory action which amended and added to existing regulations to implement these statutory changes.

Title 5

California Code of Regulations

ADOPT: 18220.2, 18224.2, 18224.4, 18240.5, 18249 AMEND: 18220, 18240, 18248, 18244

Filed 10/11/05

Effective 10/11/05

Agency Contact: Debra Strain (916) 319-0641

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN MAY 18, 2005
TO OCTOBER 12, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

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08/29/05 AMEND: Div. 8, Ch. 6, Sec. 27000

08/15/05 AMEND: 51000

08/09/05 ADOPT: 59520

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07/27/05 ADOPT: Div. 8, Ch. 23, Sec. 44000

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08/05/05 ADOPT: 40-036 AMEND: 22-071, 22-072, 22-305, 40-103 40-105, 40-107, 40-119, 40-125, 40-131, 40-173, 40-181 40-188, 40-190, 41-405, 42-209, 42-213, 42-221, 42-302, 42-406, 42-407, 42-716, 42-721, 42-751, 42-769, 44-101, 44-102, 44-111, 44-113, 44-115,
 06/29/05 AMEND: 63.103.2, 63-300.5, 63-402.229, 63-503.441, 63-509(b), 63-509(c), 63-801.737(QR)
 06/15/05 AMEND: 80027, 80036, 87224, 87228, 87834, 87836, 101178 101187, 102384

Title MPP

09/20/05 REPEAL: 11-405.22
 08/12/05 AMEND: 42-101
 08/05/05 ADOPT: 63-508, 63-509 AMEND: 63-034, 63-102, 63-103, 63-300, 63-301, 63-410, 63-501, 63-503, 63-504, 63-505, 63-801, 63-804
 08/01/05 AMEND: 11-400, 11-102, 11-403, 11-406

